(23,749 and 23,750)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 195.

THE STATE OF SOUTH CAROLINA *EX RELATIONE* PHOENIX MUTUAL LIFE INSURANCE COMPANY, PLAINTIFF IN ERROR,

vs.

FITZ H. McMASTER, AS INSURANCE COMMISSIONER OF THE STATE OF SOUTH CAROLINA.

No. 196.

THE STATE OF SOUTH CAROLINA *EX RELATIONE* LOUIS SHERFESEE AND FRANK F. COVINGTON, PLAINTIFFS IN ERROR,

vs.

FITZ H. McMASTER, AS INSURANCE COMMISSIONER OF THE STATE OF SOUTH CAROLINA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

INDEX.

	Original.	Print
Petition of Phoenix Mutual Life Insurance Company for mandamus	1	1
Exhibit "A"—Bond of Phoenix Mutual Life Insurance Co. required to operate in South Carolina	11	7
Notice of motion for mandamus	13	9
Order fixing time for hearing	15	10
Injunction and stay order	16	10
Order fixing time for hearing	17	11

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 3, 1914.

	Original.	Print
Return of respondent	18	12
Exhibit "A"—Statement as to compulsory investment law.	22	14
Traverse of petitioner Phoenix Mutual Life Insurance Co. to return of respondent	23	15
Petition of Louis Sherfesee and Frank F. Covington for mandamus	31	20
Return of respondent	40	26
Traverse of petitioners Louis Sherfesee and Frank F. Covington to return of respondent	44	29
Order consolidating cases and referring same to master to take testimony	52	34
Report of Special Master A. D. McFaddin	54	35
Evidence before the master	55	36
Testimony of John M. Holcombe	57	37
Testimony of Archibald A. Welch	66	43
Relator's Exhibit A—Letter of F. H. McMaster to Phoenix Insurance Co., July 8, 1911	71	47
B—Extract from report of Insurance Commissioner of Connecticut, 1912.	72	47
C—Letter of F. H. McMaster to Gulf & Atlantic Insurance Co., March 16, 1912	72	48
D—Bond of Phoenix Mutual Life Insurance Co. required to operate in South Carolina	73	48
E—Letter of F. H. McMaster to Phoenix Insurance Co., March 25, 1912	75	50
F—Letter of H. E. Johnson to F. H. McMaster, March 20, 1912	76	51
G—Letter of H. E. Johnson to F. H. McMaster, March 21, 1912	77	51
H—Financial statement of Gulf & Atlantic Insurance Co., Dec. 13, 1911	77	51
I—Schedule of securities of Phoenix Insurance Co.	80	54
Stipulation as to testimony	82	55
Testimony of F. H. McMaster	84	56
Defendant's Exhibit A—Letter of Insurance Commissioner to John M. Holcombe, February 15, 1912	101	68
B—Letter of John M. Holcombe to F. H. McMaster, February 19, 1912	102	69
C—Letter of Insurance Commissioner to John M. Holcombe, February 23, 1912	102	69
D—Letter of John M. Holcombe to F. H. McMaster, February 26, 1912	103	70
E—Letter of Insurance Commissioner to John M. Holcombe, January 29, 1912	104	70

	Original.	Print
Defendant's Exhibit F—Letter of John M. Holcombe to F. H. McMaster, February 2, 1912.	104	70
G—Letter of H. E. Johnson to F. H. McMaster, August 22, 1912.....	106	72
G¹—Letter of Insurance Commissioner to Louis Sherfesee, January 13, 1912	106	72
H—Letter of Louis Sherfesee to Insurance Commissioner, March 25, 1912	107	73
I—List of insurance companies licensed to operate in South Carolina	108	73
Return of Mutual Benefit Life Insurance Company.....	109	74
Opinion	112	77
Petition for rehearing.....	115	79
Petition for stay of proceedings.....	122	83
Order granting stay.....	123	84
Brief of petitioner on application for rehearing.....	123	85
Order dismissing petition for rehearing and revoking stay.....	141	95
Petition of Phoenix Mutual Life Insurance Co. for writ of error.	142	96
Assignment of errors of Phoenix Mutual Life Insurance Co.....	143	96
Writ of error (copy) of Phoenix Mutual Life Insurance Co.....	147	98
Bond on writ of error of Phoenix Mutual Life Insurance Co.....	149	100
Citation and service on behalf of Phoenix Mutual Life Insurance Co. (copy).....	153	101
Petition for writ of error on behalf of Louis Sherfesee and Frank F. Covington.....	154	102
Assignment of errors of Louis Sherfesee and Frank F. Covington	155	103
Writ of error on behalf of Louis Sherfesee and Frank F. Covington (copy)	159	105
Bond on writ of error of Louis Sherfesee and Frank F. Covington	161	106
Citation and service on behalf of Louis Sherfesee and Frank F. Covington (copy)	165	108
Clerk's return to writ of error and certificate to record.....	166	109
Writ of error of Phoenix Insurance Co. (original).....	168	109
Citation and service on behalf of Phoenix Insurance Co. (original)	171	111
Writ of error on behalf of Louis Sherfesee and Frank F. Covington (original)	173	111
Citation and service on behalf of Louis Sherfesee and Frank F. Covington (original).....	176	112

1 *Petition for Mandamus.*

Filed March 27, 1912.

THE STATE OF SOUTH CAROLINA:

In the Supreme Court.

STATE OF SOUTH CAROLINA ex Relatione PHOENIX MUTUAL LIFE Insurance Company, a Body Corporate under the Laws of the State of Connecticut, Having its Principal Place of Business in the City of Hartford, in the State of Connecticut, and Duly Licensed to Do Business in the State of South Carolina, Petitioner,

versus

FITZ H. MCMASTER, as Insurance Commissioner of the State of South Carolina, Respondent.

To the Honorable Richard C. Watts, a Justice of the Supreme Court of the State of South Carolina:

The Petition of Phoenix Mutual Life Insurance Company respectfully shows:

I. That your Petitioner, said Phoenix Mutual Life Insurance Company, now is, and during all the times hereinafter mentioned, has been a corporation duly organized and existing under and by virtue of the laws of the State of Connecticut, for the purpose
2 of transacting the business of insurance on lives and all or any other insurance pertaining to life, having its principal place of business in the City of Hartford, State of Connecticut.

II. That your Petitioner, said Phoenix Mutual Life Insurance Company, was heretofore duly licensed to do business as a Life Insurance Company in the State of South Carolina, and that it now is carrying on such business under and by virtue of a license granted to it by Fitz H. McMaster, as Insurance Commissioner, of the State of South Carolina, Respondent herein, which said license is still existent and of force, and does not by its limitations, expire until the First (1st) day of April, 1912, it having numerous agents doing business on its behalf in said State, all of whom have heretofore been, and still are, duly licensed as such by the Respondent herein, as Insurance Commissioner of the State of South Carolina.

III. That the Respondent, Fitz H. McMaster, is now, and during the times herein mentioned, was Insurance Commissioner of the State of South Carolina, duly elected and commissioned in accordance with the provisions of an Act of the General Assembly of the State of South Carolina, entitled "An Act to Establish the Insurance Department of South Carolina, and to provide for the conduct of the same," approved the 24th day of February, 1908, and other subsequent Acts amendatory thereof.

IV. That in and by the provisions of said Act of February 24,

1908, there is established a separate and distinct department of the State Government, known as the Insurance Department, charged with the enforcement and execution of the laws now in existence, or thereafter to be passed, relating to insurance; and it is further provided in said Act that said Insurance Commissioner shall issue the licenses required by law to be obtained by the insurance companies doing business in this State (reference to said Act is hereby craved as often as is necessary).

V. That by a further Act, approved the First day of March, 1909, entitled "An Act to Amend an Act entitled 'An Act to Establish
the Insurance Department of South Carolina and to Provide
3 for the Conduct of the Same,' Approved February 24, 1908,
by Striking out Sections 7, 8, 9, 10 and 12 thereof, and Inserting in Lieu Thereof Other Sections, to be known as Sections 7, 8, 9, 10, 11, 12, 13, 14 and 15," said Act of the 24th day of February, 1908, was further amended as by reference thereto will appear.

VI. That by a further Act approved the 8th day of March, 1910, the Act of the General Assembly referred to in the preceding Paragraph of this Petition, and further amended by an Act entitled "An Act to Amend Sections 10 and 12 of an Act Entitled 'An Act to Amend an Act Entitled (An Act to Establish the Insurance Department of South Carolina, and to Provide for the Conduct of the Same) Approved February 24th, 1908, by Striking Out Sections 7, 8, 9, 10 and 12 Thereof and Inserting in Lieu Thereof Other Sections to Be Known as Sections 7, 8, 9, 10, 11, 12, 13, 14 and 15,' Approved March 8, 1909, and to Add Thereto Sections to be Known as 16, 17, 18, 19 and 20."

VII. That in and by the provisions of law of the State of South Carolina as existing and of force on the date of this Petition, and previous thereto, a foreign insurance company desiring to continue to do business in the State of South Carolina and to secure a renewal of its license therefor, was required to do and perform certain acts and conditions among which was the requirement that each such company should deposit with the Insurance Commissioner an approved bond or approved securities in the discretion of the Insurance Commissioner, as follows:—Each Life Insurance Company Twenty Thousand Dollars ($20,000.00) and the sum of One Hundred and Fifty Dollars ($150.00) the required license fee, and the further sum of Fifty Cents ($.50) for each and every Agent appointed for said company within the limits of the said State, all of which will more fully and at large appear by reference to the several Acts of the General Assembly of the State of South Carolina, to which reference is craved as often as may be necessary.

VIII. Your Petitioner further shows that on the 25th day of March, 1912, your Petitioner duly tendered to the Respondent
herein, Fitz H. McMaster, as Insurance Commissioner of the
4 State of South Carolina, United States legal tenders, to-wit,
gold coin of the United States, in the sum of One Hundred and Sixty Dollars and Fifty Cents ($160.50), and its Bond (Phoenix Mutual Life Insurance Company, as Principal, and Gulf and Atlantic Insurance Company as Surety) in the form prescribed

by the Respondent herein, a copy of which is hereto annexed and hereby made a part of this Petition, and demanding that the Respondent herein either accept or decline the tender so made by it, and that if said tender was accepted, the Respondent should issue to it the license prescribed by law entitling it to do business from the First (1st) day of April 1912 to the First (1st) day of April 1913, in the State of South Carolina and to license its Agents therein for the same period; or, that if the Respondent declined so to do, that then this Petitioner should be remitted to its rights as given it by the law in such case made and provided.

IX. That the Respondent herein, Fitz H. McMaster, on said date, to-wit, the 25th day of March, 1912, returned to your Petitioner the aforesaid bond and declined to issue to it the license to do business in the State of South Carolina, from the 1st day of April 1912, until the 1st day of April 1913, and to issue a license to its Agents in the State of South Carolina, as provided by law, unless your Petitioner should make with the Respondent a deposit of securities acceptable to him, in the sum of Twenty Thousand Dollars ($20,000.00) and that the Respondent further required that such securities so demanded to be deposited and acceptable to him, should be bonds of the State of South Carolina, of any County, City or Town of the State of South Carolina, or First Mortgage Bonds on real estate in the State of South Carolina; or First Mortgage Bonds of solvent domestic corporations, whose property is situate entirely within this State, or any property situate in this State and taxable therein. And your Petitioner further shows that shortly previous thereto, to-wit, on the 16th day of March, 1912, the Respondent expressed his willingness to accept such surety bond from this Petitioner, if it furnished him with an affidavit showing that at least one-fourth (¼) of the total reserves on its Policies in the State of South Carolina had been invested in such securities as are named and prescribed in the Act of the General Assembly of the State of South Carolina, approved the First (1st) day of March, 1909, and amended by the Act of the General Assembly approved the Eighth (8th) day of March, 1910.

X. Your Petitioner further shows that there is no Statute in the State of South Carolina which requires any Life Insurance Company to invest any part of its reserve on Policies issued in the State of South Carolina, and that the only provision of law on the Statute Books of the said State wherein is contained any reference to the classes of securities which Life Insurance Companies may invest in, is the provision in Section Fourteen (14) of the Act approved the First (1st) day of March, 1909, and subsequently amended by Section 20 of the Act approved the Eighth (8th) day of March, 1910, which provides that if the Executive Officer of the Company shall file with the Insurance Commissioner a sworn statement showing that at least one-fourth (¼) of the reserve on all Policies issued in the State of South Carolina is maintained in and invested in any or all of the following securities, or property, to wit:—Bonds of the State of South Carolina of any County, City or Town of the State of South Carolina, or First Mortgage Bonds on real estate in the

State of South Carolina; or First Mortgage Bonds of solvent domestic corporations, whose property is situate entirely within this State, or any property situate in this State and taxable therein, and should be an amount at least one-fourth (¼) of the total reserve on its Policies in the State of South Carolina, and to be such securities as are named and prescribed in the Act of the General Assembly of the State of South Carolina, approved the 1st day of March, 1909, and amended by the Act of the General Assembly approved the 8th day of March, 1910, then and in such case, there is a graduated scale of a reduction of the per centum upon gross receipts required to be paid as an additional license fee by companies doing business in the said State; but there is no provision in any of the said Acts making the investment of said reserve or any part thereof, compulsory.

XI. Your Petitioner further shows that the Respondent herein has accepted from other Life Insurance Companies their re-
6 spective bonds with the Surety Company as Surety and has issued to such Companies their licenses, upon the delivery of such bond with a Surety Company as Surety, whenever such Life Insurance Company has complied with the requirement and demand of the Respondent by investing at least one-fourth (¼) of its reserve on South Carolina Policies in the securities named in the Act of the General Assembly of South Carolina of 1910 before referred to, but has refused to issue such licenses upon the tender and delivery of such Surety Company's Bond to any Life Insurance Company which has not complied with the demand of the Respondent as hereinbefore set forth.

XII. Your Petitioner further shows that as far back as the 8th day of July, 1911, the Respondent herein undertook to issue and did issue to this Petitioner and other similar life Insurance Companies an ultimatum in the words following, to-wit:

"Insurance Department of South Carolina.

Fitz Hugh McMaster, Commissioner, Columbia, S. C.

JULY 8, 1911.

Phoenix Mutual Insurance Co., Hartford, Connecticut.

DEAR SIRS: Under the law requiring insurance companies to make deposit with the Insurance Commissioner, it is within the discretion of the Commissioner to accept a surety bond, or to require the deposit of securities.

This is to notify you that, on the next license year, April 1, 1912, the Insurance Commissioner will ask all companies, which have not invested at least one-fourth of their reserve on South Carolina policies in the securities named in the Act of 1910, to deposit
7 South Carolina securities with the Department. From such companies, no surety bond will be accepted.

From companies, which have invested at least one-fourth of their reserves on South Carolina policies in securities of this State, a surety bond may be accepted.

This Department will receive on deposit South Carolina, State, county, or municipal bonds; first mortgage bonds of real estate in the State; first mortgage bonds of solvent domestic corporations, whose property is situate entirely within the State; or time certificates of deposits in banks of the State.

This notice is given now, so that you may provide yourself with such securities as may be satisfactory to you.

Very truly,

(Signed) F. H. McMASTER,
Insurance Commissioner."

"McM/E."

XIII. Your Petitioner further shows that in pursuance of such ultimatum the Respondent herein, as hereinbefore set forth, has refused to accept the Bond of a Surety Company as hereinbefore set forth and hereto annexed and marked "Exhibit A." and thereupon to license your Petitioner, because that it has not seen fit to comply with the arbitrary ultimatum demanded by the Respondent, to compel the Petitioner to do that which the Statute law of the State of South Carolina does not require.

XIV. Your Petitioner further shows that subsequent to the 8th day of July, 1911, to-wit, at the Session of the General Assembly of the State of South Carolina, for the Session of 1912, the Respondent herein did advocate and seek to have enacted into law a Bill requiring all Life Insurance Companies doing business in the State of South Carolina to invest Seventy-five (75) Per Cent. of the reserves on Policies issued in the State of South Carolina, stating that such Bill contains the true principle for the greatest prosperity of the State, and that the Respondent was conclusively convinced of the correctness and desirability of the passage of such a Bill; but
8 that said Bill was unanimously reported unfavorably and killed in the General Assembly of the State of South Carolina, such General Assembly refusing to enact into law the requirement for the investment of any portion of the reserve of your Petitioner or of any other like Insurance Company, as sought to be enforced by the Respondent herein.

XV. Your Petitioner further shows that the action of the Respondent in undertaking to exact from this Petitioner as a condition of accepting a Surety Bond from it, the investment by it of at least one-fourth (¼) of its reserve in the securities required by the Respondent and in accepting from other Insurance Companies who have complied with the arbitrary ultimatum of the Respondent, as above stated, a Surety Bond of a Surety Company and issuing to them a license to do business in the State of South Carolina thereupon, is an abuse of the discretion vested in the Commissioner under the terms of the Act of the General Assembly hereinbefore referred to and is arbitrary and discriminatory and beyond the exercise of his discretion under the terms of the Act.

XVI. And your Petitioner further shows that the discrimination hereinbefore set forth on the part of the Respondent herein, is in violation of and in contravention to Section Five (5), Article One (1) of the Constitution of the State of South Carolina, in that it

deprives your Petitioners of its property without due process of law and denies to it the equal protection of the law.

XVII. And your Petitioner further shows that the discrimination hereinbefore set forth on the part of the Respondent herein, is in violation of and in contravention to the Fourteenth (14th) Amendment to the Constitution of the United States, in that it deprives your Petitioners of its property without due process of law and denies to it the equal protection of the law.

XVIII. And your Petitioner further shows that by an Act of the General Assembly of the State of South Carolina, entitled "An Act to provide a Method of Appeal from the orders, rulings or decisions of the Insurance Commissioner," ratified on the — (—) day
9 of February, 1912, and which became a law without the Governor's approval, and is now in effect and of force, it is provided as follows:

"Be *it* enacted by the General Assembly of the State of South Carolina:

SECTION 1. That any order, ruling or decision of the Insurance Commissioner in all matters, either of law or discretion, within the jurisdiction of his Department, shall be subject to review by certiorari or mandamus proceedings before any Circuit Judge or Justice of the Supreme Court, which may be held at chambers or in open court, upon reasonable notice to the Insurance Commissioner.

SECTION 2. All Acts or parts of Acts inconsistent herewith be, and the same *be,* repealed."

And your Petitioner invokes the provisions of said Act of the General Assembly hereinbefore set forth and hereby appealing from the order, ruling or decision of the Respondent herein, dated the 25th day of March, 1912, and hereinbefore set forth, and seeking to review by Mandamus the said order, ruling or decision hereinbefore set forth; and, whereas, and forasmuch as your Petitioner thus seeks the relief given unto it, prays that your Honor, as a Justice of the Supreme Court of the State of South Carolina, will grant to your Petitioner a Writ of Mandamus, directed to the said Fitz H. McMaster, as Insurance Commissioner of the State of South Carolina, commanding him to immediately issue and deliver unto your Petitioner a license to transact the business of a Life Insurance Company, in the State of South Carolina, from the First (1st) day of April, 1912, until the Thirty-first (31st) day of March, 1913, in the manner and form provided by the laws of said State; and second, for such other and further relief in the premises as may be just, proper and well.

MORDECAI & GADSDEN,
RUTLEDGE & HAGOOD,
Attorneys for Petitioner.

10 STATE OF SOUTH CAROLINA,
County of Charleston:

Personally appeared before me Louis Sherfesee, who, being duly sworn, says that he is the General Manager in South Carolina, for the Petitioner, Pheonix Mutual Life Insurance Company, which is a

body corporate under the laws of the State of Connecticut, and that the foregoing Petition is true of his own knowledge. Deponent makes this verification, because all the facts stated in the Petition are within the personal knowledge of deponent and none of the officers of the Petitioner reside within the limits of this State, it being a foreign corporation.

LOUIS SHERFESEE.

Sworn to and Subscribed before me this 26th day of March, 1912.

M. F. KENNEDY,
Notary Public for South Carolina.

11 EXHIBIT A.

Filed March 27, 1912.

Form No. 5.

STATE OF CONNECTICUT:

Know all men by these presents, that the undersigned Phoenix Mutual Life Ins. Company, as principal, of Hartford, Conn. & Gulf and Atlantic Insurance Co., the undersigned, as surety, of Columbia, So. Carolina, are firmly held and bound unto F. H. McMaster, as Insurance Commissioner of the State of South Carolina, and his successors in office, in the full and just sum of twenty thousand dollars, to which payment we bind ourselves and our respective successors and assigns jointly and severally firmly by these presents.

Sealed with our seals and dated at Hartford, Conn., this thirteenth day of March, in the year of our Lord one thousand nine hundred and twelve.

The condition of the above bond or obligation is as follows:

Whereas, the laws of the State of South Carolina require a legal reserve life insurance company before doing business in this State to deposit with the Insurance Commissioner an approved bond or approved securities in the sum of twenty thousand dollars:

And whereas, the Phoenix Mutual Life Insurance Company aforesaid, desires to transact business within the State of South Carolina for the year beginning April 1st, 1912, and ending March 31st, 1913, and in accordance with the terms of the laws of the State, desires to deposit with the Insurance Commissioner a good and solvent bond in the sum of twenty thousand dollars, and does by this instrument furnish and file said bond:

Now, therefore, the condition of the above bond is such, that it shall continue of full force and effect so long as said Phoenix Mutual Life Insurance Company shall do business in this State, or have outstanding contracts therein, or until another bond is lawfully accepted by the Insurance Commissioner, and that if the above bound Phoenix Mutual Life Insurance Company shall well and truly pay or cause to be paid to the said F. H. McMaster, as Insurance Com-

missioner of the State of South Carolina, and his successors
12 in office on demand the full and just sum of any and all judgments entered up against the said Phoenix Mutual Life Insurance Company in any court of competent jurisdiction in this State (any such judgment hereby being declared to be a lien upon this bond), during the time the said Phoenix Mutual Life Insurance Company does business in this State, or has outstanding contracts herein, then this bond to be void and of no effect, otherwise to remain of full force and effect.

In witness whereof the said Phoenix Mutual Life Insurance Co., and the said Gulf & Atlantic Insurance Company have set their hands and affixed their seals in the manner and form following:

[SEAL.] PHOENIX MUTUAL LIFE INS. CO.,
(Signed) JOHN M. HOLCOMBE, *President.*

In the presence of:

(Signed) HOWARD H. KEEP,
Witness as to Phoenix Life Ins. Co.
[SEAL.] GULF & ATLANTIC INS. CO.,
(Signed) R. M. JONES, *President.*
(Signed) E. C. ELMORE,
Witness as to Gulf & Atlantic Ins. Co.

STATE OF CONNECTICUT,
County of Hartford:

Personally appeared before me Howard H. Keep, who, being duly sworn, says that he saw the within mentioned Phoenix Mutual Life Insurance Co., by John M. Holcombe, Pres., sign, seal, and, as its act or deed, deliver the within written bond for the uses and purposes therein mentioned, and that he witnessed the execution of the same.

(Signed) HOWARD H. KEEP.

Sworn to and subscribed before me this 13 day of March, 1912.
[SEAL.] (Signed) GEORGE NICHOLS,
Notary Public.

13 STATE OF SOUTH CAROLINA,
County of Richland:

Personally appeared before me E. C. Elmore, who, being duly sworn, says that he saw the within mentioned Gulf & Atlantic Ins. Co. by R. M. Jones, Pres., sign, seal, and, as its act or deed, deliver the within written bond for the uses and purposes therein mentioned, and that he witnessed the execution of the same.

(Signed) E. C. ELMORE.

Sworn to and subscribed before me this 16 day of M'ch, 1912.
(Signed) CARLTON W. SAWYER,
[SEAL.] *N. P. S. C.*

Notice of Motion.

Filed March 27, 1912.

To the Respondent, Fitz H. McMaster:

Please take notice that upon the foregoing and attached, verified petition, the undersigned, on behalf of the petitioner above named, Phoenix Mutual Life Insurance Company, will move before the Honorable Richard C. Watts, a Justice of the Supreme Court of the State of South Carolina, at the Chambers in the City of Cheraw, County of Chesterfield, State of South Carolina, on Friday, the Twenty-ninth (29th) day of March, 1912, at Twelve (12) o'clock Noon, or as soon thereafter as Counsel can be heard, for the Order hereto annexed.

You are invited to attend at said hearing.

MORDECAI & GADSDEN,
RUTLEDGE & HAGOOD,
Attorneys for Petitioner.

Charleston, South Carolina, March 26, 1912.

14 THE STATE OF SOUTH CAROLINA:

In the Supreme Court.

STATE OF SOUTH CAROLINA ex Relatione PHOENIX MUTUAL LIFE Insurance Company, a Body Corporate under the Laws of the State of Connecticut, Having its Principal Place of Business in the City of Hartford, in the State of Connecticut, and Duly Licensed to Do Business in the State of South Carolina, Petitioner,

versus

FITZ H. MCMASTER, as Insurance Commissioner of the State of South Carolina, Respondent.

On reading the foregoing Petition of Phoenix Mutual Life Insurance Company, duly verified and due notice of the application therefor having been given to the Respondent, after hearing counsel,—

It is ordered That a Writ of Mandamus do issue out of and under the Seal of this Court, directed to the said Fitz H. McMaster, as insurance Commissioner of the State of South Carolina, commanding him to immediately issue and deliver unto the Petitioner, Phoenix Mutual Life Insurance Company, of Hartford, Connecticut, a license to transact the business of a life insurance company in the State of South Carolina, from the First (1st) day of April, 1912, until the Thirty-first (31st) day of March, 1913, in the manner and form provided by the laws of said State.

Dated at Cheraw, in said State, this — day of March, 1912.

Justice of the Supreme Court, S. C.

15 *Order Fixing Time for Hearing.*

Filed April 1, 1912.

STATE OF SOUTH CAROLINA:

In the Supreme Court.

THE STATE ex Relatione PHOENIX MUTUAL LIFE INSURANCE COMPANY
versus
F. H. McMASTER, Insurance Commissioner.

On motion of J. Fraser Lyon, Esquire, Attorney General, appearing for the Respondent,

It is ordered That this cause be set down for hearing before me at my Chambers in Cheraw in said State on Tuesday the 9th day of April, 1912, at Noon, or as soon thereafter as counsel can be heard.

R. C. WATTS, *A. J.*

We consent:
MORDECAI & GADSDEN,
RUTLEDGE & HAGOOD,
Attorneys for Relator.

March 29th, 1912, Cheraw, S. C.

16 *Injunction and Stay Order.*

Filed April 1, 1912.

STATE OF SOUTH CAROLINA:

In the Supreme Court.

THE STATE ex Relatione PHOENIX MUTUAL LIFE INSURANCE COMPANY
versus
F. H. McMASTER, Insurance Commissioner.

An application having been made to me at my Chambers for a stay pending the final decision in this cause. After hearing Counsel for Petitioner and Respondent, it is ordered that, Pending the final decision herein, the Respondent and his representatives be restrained and enjoined from proceeding against the Petitioner and its agents. It is further ordered that the Petitioner on or before April —, 1912, enter into Bond with proper security, in the sum of One Thousand Dollars, to answer to the Respondent for all costs and damages which may accrue, the same to be ascertained by a reference hereafter if necessary.

It is further ordered, that this case be set down for hearing before the Supreme Court on Tuesday, the 16th day of April, 1912, at 10 A. M. or as soon thereafter as Counsel can be heard.

R. C. WATTS, *J. J.*

Cheraw, S. C., March 30th, 1912.

The bond required by the foregoing order was duly made and filed.

17 *Order Fixing Time for Hearing.*

Filed April 1, 1912.

STATE OF SOUTH CAROLINA:

In the Supreme Court.

STATE OF SOUTH CAROLINA ex Relatione PHOENIX MUTUAL LIFE INSURANCE COMPANY, Petitioner,
versus
FITZ H. MCMASTER, Insurance Commissioner, Respondent.

Order.

STATE OF SOUTH CAROLINA ex Relatione LOUIS SHERFESEE and FRANK F. COVINGTON, Petitioners,
versus
FITZ H. MCMASTER, Insurance Commissioner, Respondent.

Order.

Upon motion of J. Fraser Lyon, Attorney General, Attorney for the Respondent,

It is ordered That the hearing of these causes be continued from the time set in the previous Order of the Court, to-wit, Tuesday, the Sixteenth (16th) day of April, 1912, until Monday the Thirteenth (13th) day of May, 1912, at Ten (10) o'clock A. M., or as soon thereafter as counsel can be heard.

EUGENE B. GARY, *Chief Justice.*

We consent:

MORDECAI & GADSDEN,
RUTLEDGE & HAGOOD,
Attorneys for Petitioners.
J. FRASER LYON,
Attorney for Respondent.

18 *Return of Respondent, F. H. McMaster.*

Filed April 20, 1912.

STATE OF SOUTH CAROLINA:

In the Supreme Court.

STATE OF SOUTH CAROLINA ex Relatione PHOENIX MUTUAL LIFE Insurance Company, a Body Corporate under the Laws of the State of Connecticut, Having its Principal Place of Business in the City of Hartford, in the State of Connecticut, and Duly Licensed in the State of South Carolina, Petitioner,

versus

FITZ H. MCMASTER, as Insurance Commissioner of the State of South Carolina, Respondent

To the Supreme Court of the State of South Carolina:

The Respondent herein would respectfully show to the Court:

1. That he admits the allegations contained in paragraphs Nos. 1, 3, 4, 5, 6, 7, 8, 10 and 18 of the petition herein.

2. That the allegations in paragraph No. 2 are admitted as being true on the date of filing of said petition. But your Respondent alleges that, since the first day of April, 1912, the said Petitioner has held no license, or authority, for doing business in this State, either through its duly appointed agents, or otherwise.

3. The Respondent denies so much of paragraph 9 as alleges that he would receive only the securities named in said paragraph, and the Respondent alleges that he would have received time certificates of deposit in banks of this State as stated in his letter

19 of July 8th, 1911, and in the absence of ownership of the securities named in his letter of July 8th, 1911, that he would have received from the Petitioner, as he has received from other companies, a deposit of such other securities of recognized value as the Petitioner might have tendered.

4. The Respondent denies so much of paragraph No. 11 of the petition as states that the Respondent has demanded, or sought to demand, or made any requirement that the Petitioner shall invest any portion of its reserve on South Carolina policies in South Carolina securities. Your Respondent alleges that he has only sought to act on sound and wise principles of caution in asking for a deposit of securities from such companies as had not made investments in South Carolina securities, for your Respondent verily believes that such companies are maintaining themselves in a position to withdraw from the State of South Carolina on divers pretexts, wholly within the discretion of the management of such companies. Your Respondent knows of his own knowledge that a number of companies have threatened to withdraw from this State on divers pretexts, and that the General Agent of the Petitioner herein has told your Respondent that the Petitioner would withdraw from this

state if certain legislation, objectionable to the Petitioner, should be enacted by the legislature; that if the Petitioner, or any other company not having investments in this State, should withdraw from the State, the policy holders in this State would have greater protection if securities are deposited than if the surety bond tendered by the Petitioner herein was accepted by your Respondent. That the surety on the bond tendered by the Petitioner herein is already surety on the bonds of a number of other life, fire and miscellaneous insurance companies, but that such surety would be wholly inadequate if the principals of the bonds should withdraw from the State, and said surety company would not be accepted on the bond of any principal which was thought likely to withdraw from the State, and the same is true of every other surety company which has furnished bonds for insurance companies in this State. That the surety on the bond tendered by the Petitioner herein has assets in this State of about $60,000.00, and that no other surety
20 company, which has furnished bonds for life insurance companies in this State, has more than $20,000.00 of assets in the State, as shown by statements on file in the office of the Insurance Commissioner.

5. Your Respondent denies the allegations contained in paragraph 12 of the Petition herein except so much as alleges that the letter of July 8, 1911, and set forth in the petition, was issued to the Petitioner, and other similar life insurance companies.

6. Your Respondent denies all of paragraph 13, except so much as alleges *to* his refusing to accept the bond tendered herein, and to issue a license thereon to the petitioner.

7. Your Respondent denies so much of paragraph 14 as alleges that he sought to have passed a compulsory investment bill at the last session of the legislature, and alleges that, while he does believe in the justice and desirability of such legislation, he stated to the Senate Committee that, for various reasons, it would not be well to pass such legislation now. That your Respondent's attitude and views in respect to the allegations contained in the above mentioned paragraph of the petition are fully set forth on pages Nos. 9 and 10 of his annual report to the legislature for the year 1911, and that a copy of so much of that report is hereto annexed and made a part of this return and marked "Exhibit A."

8. Your Respondent denies each and every allegation contained in paragraphs Nos. 15, 16 and 17 of the petition.

9. That for a further defense herein the Respondent would show that the Petitioner herein, by reason of its failure to invest in securities in this State and, as has been asserted by its general agent, holds itself in readiness to withdraw and cease from doing business in this State for any reason or pretext, which it may desire to assign. That, if the Petitioner should be allowed a license to do business in the State for the year 1912-13, or for any other years, upon a bond being filed with your respondent, the policy holders in the State of the Petitioner would have no other security, or assurances, on
21 the part of the Petitioner for discharging its contract obligations than the value of said bond with the surety company

tendered on the bond of the Petitioner, whose assets in this State are about $60,000, and which is surety on bonds for insurance companies in this State in excess of $600,000. That any other surety company that might be offered as surety by the Petitioner has assets in this State of not more than $20,000, and is surety on bonds far in excess of $20,000. That, in the event good and valid securities are deposited with your Respondent as a condition and prerequisite for the issuance of the license sought by the Petitioner, the holders of policies issued by the petitioner in this State would have a far more complete, safe and adequate security than if the bond tendered by the Petitioner or by any other company, was accepted as a condition and prerequisite to the granting of said license, and your Respondent verily believes that it is to the best interest of the policyholders in said company, residing in said State of South Carolina, that good and valid securities be deposited as a condition upon which said license shall be issued.

Wherefore, your Respondent prays that the petition be dismissed with costs.

J. FRASER LYON,
Attorney General.

STATE OF SOUTH CAROLINA,
County of Richland:

Personally came Fitz H. McMaster, Insurance Commissioner of South Carolina, who, being duly sworn, says that the allegations contained in the foregoing answer and return are true to his own knowledge, except as to matters stated on information and belief, and that these matters he believes to be true. That Respondent's information is obtained from records now on file in his office, and from statements made to him by representatives of Petitioners and of other insurance companies.

FITZ H. McMASTER.

Sworn to and subscribed before me this 19th day of April, 1912.

JOHN E. HOLMES,
Notary Public for South Carolina.

[SEAL.]

22 EXHIBIT A.

Filed April 20, 1912.

(Referring to Compulsory Investment Law.)

If such a law were passed in South Carolina, it is probable that some twelve or fifteen companies would withdraw from the State, and there would be a temporary loss in annual revenue to the State of probably $35,000 to $40,000. There would be left in the State some fifteen or twenty life insurance companies, certainly more than enough to supply all needs for insurance, and, as their business increased, the loss in revenue to the State would overcome the loss by

withdrawals. Over and beyond all else, the investments in the State by insurance companies would be immensely increased.

As an alternative to such a law and a plan which it is expected will accomplish the same results in the end, and in the meantime increase the revenues of the State, the Department recommends to the legislature that the license fee on premium collections be increased from two per centum to four per centum on all companies which do not invest at least one-fourth of their reserve on South Carolina policies in the securities named in the Act of 1909. If this does not have the desired effect, then resort may be had to a law requiring the investment of reserves.

23 *Traverse of Petitioner to Return of Respondent.*

Filed May 3, 1912.

THE STATE OF SOUTH CAROLINA:

In the Supreme Court.

STATE OF SOUTH CAROLINA ex Relatione PHOENIX MUTUAL LIFE Insurance Company, a Body Corporate under the Laws of the State of Connecticut, Having its Principal Place of Business in the City of Hartford, in the State of Connecticut, and Duly Licensed to Do Business in the State of South Carolina, Petitioner,

versus

FITZ H. MCMASTER, as Insurance Commissioner of the State of South Carolina, Respondent.

Traverse of Petitioner to Return of Respondent.

And now comes the Relator and petitioner herein and traverses the Return of the Respondent and by way of traverse says,

Referring to the Third (3) Paragraph of the Return, this Petitioner and Relator denies that the Respondent herein F. H. McMaster, Insurance Commissioner, ever offered to it, Phoenix Mutual Life Insurance Company, to receive from it a deposit of such other securities of recognized value as the Petitioner might have tendered, as alleged by the Respondent in his said Return, but, on the contrary, this Petitioner most positively avers and alleges that at no time either to the Petitioner itself or to any of its agents or servants, was any statement made by the Respondent that he would receive absolutely and in lieu of South Carolina securities, for the purpose of issuing a license for the year 1912-1913, to it, "any securities of recognized value as the Petitioner might have tendered;" and that no
24 opportunity was given to it, or them, to make such tender; but that on the contrary, the Respondent has persistently and continuously insisted on his demand that South Carolina securities be deposited and openly declared in writing that one of his reasons was that he found that investment in local securities was ac-

complished to some extent by the requirement to deposit such local securities, and hence was caused to be written by the Respondent his official letter of the eighth day of July, 1911, set out in full in the petition herein and to which reference is especially craved.

And your Petitioner further submits that it is now too late for the Respondent in prejudice of the rights of this Relator and Petitioner already accrued, after the refusal of the Respondent to accept the tender made by the Petitioner, to come in at this late day by way of his Return herein, and say that he would have received from the Petitioner, as he has alleged he has received from other Life Insurance Companies, a deposit of "such other securities of recognized value as the Petitioner might have tendered." Whereas, in fact, this Petitioner alleges that the open continuous attitude of the Respondent has been to insist on the deposit of South Carolina securities as a means of securing investment in South Carolina securities, and the Petitioner further shows that on the 16th day of March, 1912, the Respondent wrote to the Gulf and Atlantic Insurance Company its proposed surety, the following letter:

"Insurance Department of South Carolina.

Fitz Hugh McMaster, Commissioner.

COLUMBIA, S. C., March 16, 1912.

Gulf and Atlantic Insurance Co., Columbus, S. C.

DEAR SIRS: I am returning herewith the bond of the Phoenix Mutual Life Insurance Company of Hartford. I am unable to accept a bond from this company unless they will furnish me with an affidavit showing that at least one-fourth of its reserve on South Carolina policies has been invested in the securities named in the Act of 1910.

Very truly,

(Signed) F. H. McMASTER,
Insurance Commissioner."

And sent a copy thereof to this Petitioner which it received on the 19th day of March, 1912, and the Petitioner again on the 20th day of March, 1912, made upon the Respondent its formal demand for licenses as follows:

"PHOENIX MUTUAL LIFE INSURANCE COMPANY,
HARTFORD, CONN., March 20, 1912.

Hon. F. H. McMaster, Insurance Com'r, Columbia, S. C.

DEAR SIR: Application is hereby made for license to this Company to transact the business of life insurance in the State of South Carolina for the year beginning April 1, 1912.

We inclose herewith check to your order for $150 to pay the required license fee. Also enclosed please find Gulf and Atlantic Insurance Company's surety bond in the sum of $20,000, being similar to this Company's bond accepted by you in the past.

Please issue formal certificate of authority, acknowledge receipt of enclosures and send us voucher for our remittance.

Yours very truly,

(Signed) H. E. JOHNSON,
Assistant Secretary."

"PHOENIX MUTUAL LIFE INSURANCE COMPANY,
HARTFORD, CONN., March 21, 1912.

Hon. F. H. McMaster, Ins. Commissioner, Columbia, S. C.

DEAR SIR: Enclosed please find requisition for licenses for
26 twenty-one agents, for the year beginning April 1, 1912, together with check for $10.50 drawn to your order in payment of fees.

Please issue licenses and voucher for remittance in due course, and oblige,

Yours very truly,

(Signed) H. E. JOHNSON,
Assistant Secretary."

(Enc.)

And your Petitioner alleges that in a written, official communication in the month of March, 1912, just immediately previous to the formal tender made by the Petitioner herein, the Respondent plainly declared and reiterated his insistence and determination that his, the Insurance Department, would only receive on deposit, South Carolina, State, County or Municipal Bonds, First Mortgage Bonds of real estate in the State, First Mortgage Bonds of solvent domestic corporations whose property was situate entirely within the State, or time certificates of deposit of Banks within the State, and refused to commit himself in any manner, shape or form, to give any extension of time whatever, positively, within which any Life Insurance Company would be allowed to invest in South Carolina securities, either by way of complying with his demand, that there should be invested ¼ of the reserve on South Carolina policies in South Carolina securities, or for the use of South Carolina securities, up to the amount of $20,000.00, as a deposit for the purpose of securing a license for the year 1912-1913, all of which was communicated to this Petitioner.

And your Petitioner further shows that in declining the tender made by the Petitioner, as set forth in the Petition herein, the Respondent stated that he insisted upon a deposit of securities acceptable to the Insurance Commissioner in the sum of $20,000.00, and in his previous letters and communications he had in each and every case insisted that such securities acceptable to him for permanent deposit with him, would only be such as are set out in his circular letter of July 8, 1911, and made a part of the original Petition herein.

Referring to the Fourth (4) Paragraph of said Return, this Peti-

tioner insists that the Respondent did make the requirement
27 that the Petitioner should invest at least one-quarter of its reserve on South Carolina Policies in South Carolina securities, or upon its failure so to do, that the Petitioner would not be allowed to give a surety company bond, but must deposit South Carolina securities.

Your Petitioner further shows that wherever a surety company has qualified to do business in South Carolina and has been licensed by the Respondent herein, as Insurance Commissioner, it is in law, a good and sufficient surety upon all bonds prescribed by the Statute to be taken, until the Respondent as such Insurance Commissioner, shall revoke the license of such surety company and that the security of a surety bond of such company is as good security to the Respondent and the State of South Carolina and the citizens thereof as a bond of any similar company for any other class of company, whether life, fire, marine or casualty, and that so long as such company is licensed by the Respondent, the amount of assets which it may have within its control, is immaterial, so long as its license remains unrevoked and that the fact that the Respondent receives such surety bonds from other companies and accepts them as good security, compels him in fairness and justice to receive the same bond of the same company from this Petitioner.

Your Petitioner further shows that the South Carolina policy holders are not benefited by the investment of the funds of the Petitioner in South Carolina securities, but that any benefit derived inures to the general community of the State of South Carolina and not to its policy holders as a class.

Your Petitioner further shows that the Atlantic and Gulf Insurance Company, the surety upon the bond tendered herein, has been duly licensed by the Respondent, and has a reserve sufficient to answer to all of its liabilities and that if the Respondent is of the opinion that such is not the case, then he should have revoked, or may now revoke, the license of said company, although the Respondent has already accepted the bond of the said Atlantic and Gulf Insurance Company from other insurance companies not only life, but fire and other classes and for the Years 1910 and 1911 had accepted from this Petitioner the bond of said Company.

Referring to the Seventh (7) Paragraph thereof, this Peti-
28 tioner alleges that before the Meeting of the Senate Committee on Banking and Insurance held in the City of Columbia, in its Committee Room, on the 13th day of February, 1912, the Respondent herein, did read and subsequently furnish to the counsel of the Petitioner, a written statement, as follows, to-wit:

"Copy of Statement made by Commissioner McMaster on Senator Ginn's 75% Reserve Bill before Senate Insurance Committee, February 13th, 1912.

I come by invitation of your Chairman to say only a few words as to the bill before you. At first I asked to be excused from saying anything, but reflection convinces me that I would be false to the

truth as I see it, I would falter in a duty to the people of South Carolina to serve them to the best of my ability, and I should fail to fill in properly the record if I did not say to you that, after four years of the severest study I have ever given to any subject, conscious of the effects of such legislation and fully mindful of my position—the bill contains the true principle for the greatest prosperity of the State and presents the one and only means of ridding the whole country of the greatest and most irresponsible money trust not only that America but that the world has ever seen.

I have poured out my soul to you in my report, which is on your desks. The indisputable facts and figures therein given prove to my mind conclusively the correctness and desirability of the bill before you.

The bill which I presented—the three per cent. bill—is a weak, a very weak compromise, and it was presented only because I knew the power of the forces, hidden and far-reaching, which would be arrayed against this form of legislation. But it would not have been the weak compromise that it is, if I had not felt assured of support which it did not receive.

I have no more to say. I only ask you gentlemen of the Committee, who will be here next year, to remember the fair promises
29 made by the representatives of the insurance companies opposing this bill. Next year I will give you their sworn statements to show how those promises have been fulfilled."

This Petitioner denies that it has authorized any one at any time to state for it that it would withdraw from the State of South Carolina; that true it is that Louis Sherfesee, the Manager of this Petitioner in South Carolina, did state to the Respondent that he feared that if the Company was compelled to invest ¼ of its reserve in this State, that it would withdraw and he would lose his business, but this Petitioner has never of itself, authorized that this statement should be made.

On information and belief your Petitioner avers that the Respondent herein has accepted a surety bond from other life insurance companies as a condition of license for the year 1912–1913, prior to the 1st of April, 1912, without such company or companies having invested in this State at least 25% of their reserve on South Carolina Policies as demanded by Respondent.

This Petitioner at the proper time will determine in case of the passage of such legislation, whether it will or will not withdraw from the State of South Carolina, and this Petitioner avers, as in the original Petition stated, and prays that it may be granted the relief as originally craved therein.

Wherefore your Petitioner prays as in the original Petition set forth and prayed and submits itself to the Court invoking its aid as therein prayed.

MORDECAI & GADSDEN,
RUTLEDGE & HAGOOD,
Attorneys for Relator-Petitioner.

Charleston, S. C., May 2d, 1912.

30 STATE OF SOUTH CAROLINA,
Charleston County:

Personally appeared before me Louis Sherfesee, who, being duly sworn, says that he is the General Manager in South Carolina, for the Petitioner, Phoenix Mutual Life Insurance Company, which is a body corporate under the laws of the State of Connecticut and that the foregoing traverse is true of his own knowledge, except as to the matters therein stated to be on information and belief, and as to those matters, he believes them to be true.

Deponent makes this verification because all the facts stated in the Petition are within the personal knowledge of Deponent, and none of the officers of the Petitioner reside within the limits of this State, it being a foreign corporation.

LOUIS SHERFESEE.

Sworn and subscribed to before me this 2d day of May, 1912.

CHARLES L. PEARLSTINE,
Notary Public, S. C.

31 *Petition of Louis Sherfesee & Frank F. Covington for Mandamus.*

Filed March 27, 1912.

STATE OF SOUTH CAROLINA:

In the Supreme Court.

STATE OF SOUTH CAROLINA Ex Relatione LOUIS SHERFESEE and Frank F. Covington, Each and Both of Them Citizens and Residents of the State of South Carolina, Petitioners,

versus

FITZ H. MCMASTER, as Insurance Commissioner of the State of South Carolina, Respondent.

To the Honorable Richard C. Watts, a Justice of the Supreme Court of the State of South Carolina:

The Petition of Louis Sherfesee and Frank F. Covington respectfully shows:

I. That your Petitioners Louis Sherfesee and Frank F. Covington now are, and during all the times hereinafter mentioned have been Citizens and Residents of the State of South Carolina, Louis Sherfesee residing at Charleston, South Carolina, and Frank F. Covington residing at Marion, South Carolina.

II. That Phoenix Mutual Life Insurance Company was heretofore duly licensed to do business as a Life Insurance Company in the State of South Carolina, and that it now is carrying on such business under and by virtue of a license granted to it by Fitz H. McMaster, as Insurance Commissioner, of the State of South Caro-

lina, Respondent herein, which said license is still existent
32 and of force, and does not by its limitations, expire until the First (1st) day of April 1912, it having numerous agents doing business on its behalf in said State, all of whom have heretofore been, and still are, duly licensed as such by the Respondent herein, as Insurance Commissioner of the State of South Carolina.

III. That the Respondent, Fitz H. McMaster, is now, and during the times herein mentioned, was Insurance Commissioner of the State of South Carolina, duly elected and commissioned in accordance with the provisions of an Act of the General Assembly of the State of South Carolina, entitled "An Act to Establish the Insurance Department of South Carolina, and to provide for the conduct of the same," approved the 24th day of February 1908, and other subsequent Acts amendatory thereof.

IV. That in and by the provisions of said Act of February 24, 1908, there is established a separate and distinct department of the State Government, known as the Insurance Department, charged with the enforcement and execution of the laws now in existence, or thereafter to be passed, relating to insurance; and it is further provided in said Act that said Insurance Commissioner shall issue the licenses required by law to be obtained by the insurance companies doing business in this State—(reference to said Act is hereby craved as often as is necessary).

V. That by a further Act, approved the First day of March 1909, entitled "An Act to Amend an Act entitled 'An Act to Establish the Insurance Department of South Carolina, and to Provide for the Conduct of the Same,' Approved February 24, 1908, by Striking out Sections 7, 8, 9, 10 and 12 thereof, and Inserting in Lieu Thereof Other Sections, to be known as Sections 7, 8, 9, 10, 11, 12, 13, 14 and 15," said Act of the 24th day of February, 1908, was further amended as by reference thereto will appear.

VI. That by a further Act approved the 8th day of March 1910, the Act of the General Assembly referred to in the preceding Paragraph of this Petition, and further amended by an Act en-
33 titled "An Act to amend Sections 10 and 12 of an Act Entitled 'An Act to Amend an Act Entitled (An Act to Establish the Insurance Department of South Carolina, and to Provide for the Conduct of the Same) Approved Febraury 24th, 1908, by Striking Out Sections 7, 8, 9, 10 and 12 Thereof and Inserting in Lieu Thereof Other Sections to Be Known as Sections 7, 8, 9, 10, 11, 12, 13, 14 and 15,' Approved March 8, 1909, and to Add Thereto Sections to be Known as 16, 17, 18, 19 and 20."

VII. That in and by the provisions of law of the State of South Carolina as existing and of force on the date of this Petition, and previous thereto, a foreign insurance company desiring to continue to do business in the State of South Carolina and to secure a renewal of its license therefor, was required to do and perform certain acts and conditions among which was the requirement that each such company should deposit with the Insurance Commissioner an approved bond or approved securities in the discretion of the Insurance Commissioner, as follows: Each Life Insurance Company Twenty Thousand Dollars ($20,000.00) and the sum of One Hun-

dred and Fifty Dollars ($150.00) the required license fee, and the further sum of Fifty Cents ($.50) for each and every Agent appointed for said company within the limits of the said State, all of which will more fully and at large appear by reference to the several Acts of the General Assembly of the State of South Carolina, to which reference is craved as often as may be necessary.

VIII. Your Petitioners further show that on the 25th of March, 1912, there was duly tendered to the Respondent herein, Fitz H. McMaster, as Insurance Commissioner of the State of South Carolina, United States legal tenders, to wit, gold coin of the United States in the sum of One Hundred and Sixty Dollars and Fifty Cents ($160.50) and the Bond of the Phoenix Mutual Life Insurance Company, as Principal, and Gulf and Atlantic Insurance Company, as Surety, in the form prescribed by the Respondent, and the demand made upon the Respondent either to accept or decline the tender so made by it, and that if such tender was accepted the Respondent should issue to said Phoenix Mutual Life Insurance Company, the license prescribed by law, entitling it to do
34 business from the First (1st) day of April 1912, to the First (1st) day of April 1913, in the State of South Carolina, and to license its Agents therein, for the same period, among which Agents are your Petitioners, Louis Sherfesee, being General Manager, and Frank F. Covington, District Manager; or, if the Respondent declined so to do, that then the said Phoenix Mutual Life Insurance Company, as such Life Insurance Company, and your Petitioners, as its Agents, should be remitted to their respective rights as given to them respectively according to the law in such case made and provided.

IX. That the Respondent herein, Fitz H. McMaster, on said date, to-wit, the 25th day of March, 1912, returned to Phoenix Mutual Life Insurance Company the aforesaid bond and declined to issue to it the license to do business in the State of South Carolina, from the 1st day of April 1912, until the 1st day of April 1913, and to issue a license to its Agents in the State of South Carolina, as provided by law, unless Phoenix Mutual Life Insurance Company should make with the Respondent a deposit of securities acceptable to him, in the sum of Twenty Thousand Dollars ($20,000.00) and that the Respondent further required that such securities so demanded to be deposited and acceptable to him, should be bonds of the State of South Carolina, of any County, City or Town of the State of South Carolina; or First Mortgage Bonds on real estate in the State of South Carolina; or First Mortgage Bonds of solvent domestic corporations, whose property is situate entirely within this State, or any property situate in this State and taxable therein. And your petitioners further show, that shortly previous thereto, to-wit, on the 16th day of March, 1912, the Respondent expressed his willingness to accept such surety bond from Phoenix Mutual Life Insurance Company, if it furnished him with an affidavit showing that at least one-fourth (¼) of the total reserves on its Policies in the State of South Carolina had been invested in such securities as are named and prescribed in the Act of the General Assembly of the State of South Carolina, approved the First (1st) day of March,

1909, and amended by the Act of the General Assembly approved the Eighth (8th) day of March, 1910.

35 X. Your Petitioners further show that there is no Statute in the State of South Carolina which requires any Life Insurance Company to invest any part of its reserve on Policies issued in the State of South Carolina, and that the only provision of law on the Statute Books of the said State wherein is contained any reference to the classes of securities which Life Insurance Companies may invest in, is the provision in Section Fourteen (14) of the Act approved the First (1st) day of March, 1909, and subsequently amended by Section 20 of the Act approved the Eighth (8th) day of March, 1910, which provides that if the Executive Officer of the Company shall file with the Insurance Commissioner a sworn statement showing that at least one-fourth (¼) of the reserve on all Policies issued in the State of South Carolina is maintained in and invested in any or all of the following securities or property, to-wit:—Bonds of the State of South Carolina, of any County, City or Town of the State of South Carolina, or First Mortgage Bonds on real estate in the State of South Carolina; or First Mortgage Bonds of solvent domestic corporations whose property is situate entirely within this State, or any property situate in this State and taxable therein, and should be an amount at least one-fourth (¼) of the total reserve on its Policies in the State of South Carolina, and to be such securities as are named and prescribed in the Act of the General Assembly of the State of South Carolina, approved the 1st day of March 1909 and amended by the Act of the General Assembly approved the 8th day of March 1910, then and in such case, there is a graduated scale of a reduction of the per centum upon gross receipts required to be paid as an additional license fee by companies doing business in the said State; but there is no provision in any of the said Acts making the investment of said reserve or any part thereof, compulsory.

XI. Your Petitioners further show that the Respondent herein has accepted from other Life Insurance Companies their respective bonds with a Surety Company as Surety and has issued to such Companies their licenses, upon the delivery of such Bond with a Surety Company as Surety, whenever such Life Insurance Company has complied with the requirement and demand of the Respond-

36 ent by investing at least one-fourth (¼) of its reserve on South Carolina Policies in the securities named in the Act of the General Assembly of South Carolina of 1910 before referred to, but has refused to issue such licenses upon the tender and delivery of such Surety Company's Bond to any Life Insurance Company which has not complied with the demand of the Respondent as hereinbefore set forth.

XII. Your Petitioners further show that as far back as the 8th day of July 1911, the Respondent herein undertook to issue, and did issue to Phoenix Mutual Life Insurance Company and other similar Life Insurance Companies an ultimatum in the words following, to-wit:

"Insurance Department of South Carolina,

Fitz Hugh McMaster, Commissioner.

Columbia, S. C.

July 8, 1911.

Phoenix Mutual Insurance Co., Hartford, Connecticut.

DEAR SIRS: Under the law requiring insurance companies to make deposits with the Insurance Commissioner, it is within the discretion of the Commissioner to accept a surety bond, or to require the deposit of securities.

This is to notify you that, on the next license year, April 1, 1912, the Insurance Commissioner will ask all companies, which have not invested at least one-fourth of their reserve on South Carolina policies in the securities named in the Act of 1910, to deposit South Carolina securities with the Department. From such companies, no surety bonds will be accepted.

From companies, which have invested at least one-fourth of their reserves on South Carolina policies in securities of this State, a surety bond may be accepted.

37 This Department will receive on deposit South Carolina State, county, or municipal bonds; first mortgage bonds of real estate in the State; first mortgage bonds of solvent domestic corporations, whose property is situate entirely within the State; or time certificates of deposits in banks of the State.

This notice is given now, so that you may provide yourself with such securities as may be satisfactory to you.

Very truly,

(Signed) F. H. McMASTER,

Insurance Commissioner."

"McM/E".

XIII. Your Petitioners further show that in pursuance of such ultimatum the Respondent herein, as hereinbefore set forth, has refused to accept the Bond of a Surety Company as hereinbefore set forth and hereto annexed and marked "Exhibit A," and thereupon to license Phoenix Mutual Life Insurance Company, because that it has not seen fit to comply with the arbitrary ultimatum demanded by the Respondent, to compel the Phoenix Mutual Life Insurance Company to do that which the Statute law of the State of South Carolina does not require; and also refusing to license as such Agents of said Phoenix Mutual Life Insurance Company, either and both of your Petitioners.

XIV. And your Petitioners further show that the discrimination hereinbefore set forth on the part of the Respondent herein in refusing to license either the Phoenix Mutual Life Insurance Company as such Life Insurance Company, or your Petitioners as its Agents, is an abuse of the discretion vested in the Commissioner under the terms of the Act of the General Assembly hereinbefore referred to, and is arbitrary and discriminatory and beyond the exercise of his legal discretion under the terms of the Act.

XV. And your Petitioners further show that the discrimination hereinbefore set forth on the part of the Respondent herein, is in violation of and in contravention to Section Five (5), Article One (1) of the Constitution of the State of South Carolina, in
38 that it deprives said Phoenix Mutual Life Insurance Company of its property without due process of law and denies to it the equal protection of the law.

XVI. And your Petitioner further shows that the discrimination hereinbefore set forth on the part of the Respondent herein, is in violation of and in contravention to the Fourteenth (14th) Amendment to the Constitution of the United States, in that it deprives said Pheonix Mutual Life Insurance Company of its property without due process of law and denies to it the equal protection of the law.

XVII. And your Petitioners further show that by an Act of the General Assembly of the State of South Carolina, entitled "An Act to provide a Method of Appeal from the orders, rulings or decisions of the Insurance Commissioner" ratified on the — (—) day of February, 1912, and which became a law without the Governor's approval, and is now in effect and of force, it is provided as follows:

"Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. That any order, ruling or decision of the Insurance Commissioner in all matters, either of law or discretion, within the jurisdiction of his department, shall be subject to review by certiorari or mandamus proceedings before any Circuit Judge or Justice of the Supreme Court, which may be held at chambers or in open court, upon reasonable notice to the Insurance Commissioner.

SEC. 2. All acts or parts of acts inconsistent herewith be, and the same *be*, repealed."

And your Petitioners invoke the provisions of said Act of the General Assembly hereinbefore set forth and hereby appealing from the order, ruling or decision of the Respondent herein, dated the 25th day of March, 1912, and hereinbefore set forth, and seeking to review by Mandamus the said order, ruling or decision hereinbefore set forth, and, whereas, and forasmuch as your Petitioners thus seek the relief given unto them, prays that your Honor, as
39 a Justice of the Supreme Court of the State of South Carolina, will grant to your Petitioners a Writ of Mandamus, directed to the said Fitz H. McMaster, as Insurance Commissioner of the State of South Carolina, commanding him to immediately issue and deliver unto your Petitioners a license to transact the business of a Life Insurance Company, in the State of South Carolina, from the First (1st) day of April, 1912, until the Thirty-first (31st) day of March, 1913, in the manner and form provided by the laws of said State; and second, for such other and further relief in the premises as may be just, proper and well.

MORDECAI & GADSDEN,
RUTLEDGE & HAGOOD,
Attorneys for Petitioners.

STATE OF SOUTH CAROLINA,
County of Charleston:

Personally appeared before me Louis Sherfesee, who being duly sworn, says that he is one of the Petitioners herein, and that the foregoing Petition is true of his own knowledge.

LOUIS SHERFESEE.

Sworn to and subscribed before me this 26 day of March, 1912.

M. F. KENNEDY,
Notary Public for South Carolina.

40 *Return of Respondent, F. H. McMaster.*

Filed April 20, 1912.

STATE OF SOUTH CAROLINA:

In the Supreme Court.

STATE OF SOUTH CAROLINA ex Relatione LOUIS SHERFESEE and Frank F. Covington, Each and Both of Them Citizens and Residents of the State of South Carolina, Petitioners,

versus

FITZ H. MCMASTER, as Insurance Commissioner of the State of South Carolina, Respondent.

To the Supreme Court of the State of South Carolina:

The Respondent herein would respectfully show to the Court:

1. That he admits the allegations contained in paragraphs Nos. 1, 3, 4, 5, 6, 7, 8, 10 and 17 of the Petition herein.

2. That the allegations in paragraph No. 2 are admitted as being true on the date of filing of said petition. But your Respondent alleges that, since the first day of April, 1912, the said Phoenix Mutual Life Insurance Company has held no license, or authority for doing business in this State, either through its duly appointed agents, or otherwise.

3. The Respondent denies so much of paragraph 9 as alleges that he would receive only the securities named in said paragraph, and the Respondent alleges that he would have received time certificates of deposit in banks of this State, as stated in his letter of July 8th, 1911, and in the absence of ownership of the securities named in his letter of July 8th, 1911, that he would have received
41 from the Phoenix Mutual Life Insurance Company, as he has received from other companies, a deposit of such other securities of recognized value as the Phoenix Mutual Life Insurance Company might have tendered.

4. The Respondent denies so much of paragraph No. 11 of the petition as states that the Respondent has demanded, or sought to demand, or made any requirements that the Phoenix Mutual Life

Insurance Company shall invest any portion of its reserve on South Carolina policies in South Carolina securities. Your Respondent alleges that he has only sought to act on sound and wise principles of caution in asking for a deposit of securities from such companies as had not made investments in South Carolina securities, for your Respondent verily believes that such companies are maintaining themselves in a position to withdraw from the State of South Carolina on divers pretexts, wholly within the discretion of the management of such companies. Your Respondent knows of his own knowledge that a number of companies have threatened to withdraw from this State on divers pretexts, and the Petitioner herein has told your Respondent that the Phoenix Mutual Life Insurance Company would withdraw from this State if certain legislation, objectionable to the Phoenix Mutual Life Insurance Company, should be enacted by the legislature; that if the Phoenix Mutual Life Insurance Company, or any other company, not having investments in this State, should withdraw from the State, the policy holders in this State would have greater protection if securities are deposited than if the surety bond tendered by the Phoenix Mutual Life Insurance Company was accepted by your Respondent. That the surety on the bond tendered by the Phoenix Mutual Life Insurance Company is already surety on the bonds of a number of other life, fire and miscellaneous insurance companies, but that such surety would be wholly inadequate if the principals of the bonds should withdraw from the State, and that said surety company would not be accepted on the bond of any principal which was thought likely to withdraw from the State, and the same is true of every other surety company which has furnished bonds for insurance companies in this State. That the surety on the bond tendered by the Phoenix Mutual Life In-
42 surance Company has assets in this State of about $60,000.00. and that no other surety company, which has furnished bonds for life insurance companies in this State, has more than $20,000.00 of assets in the State, as shown by statements on file in the office of the Insurance Commissioner.

5. Your Respondent denies the allegations contained in paragraph 12 of the petition herein, except so much as alleges that the letter of July 8, 1911, and set forth in the petition, was issued to the Phoenix Mutual Life Insurance Company, and other similar life insurance companies.

6. Your Respondent denies all of paragraph No. 13, except so much as alleges his refusing to accept the bond tendered by the Phoenix Mutual Life Insurance Company, and to issue a license thereon to the Phoenix Mutual Life Insurance Company.

7. Your Respondent denies each and every allegation contained in paragraphs 14, 15 and 16 of the petition herein.

8. That for a further defense herein the Respondent would show that the Phoenix Mutual Life Insurance Company, by reason of its failure to invest in securities in this State and, as has been asserted by the Petitioner herein, holds itself in readiness to withdraw and cease from doing business in this State for any reason or pretext, which it may desire to assign. That, if the Phoenix Mutual Life

Insurance Company should be allowed a license to do business in the State for the year 1912-13, or for any other years, upon a bond being filed with your Respondent, the policy holders of the Phoenix Mutual Life Insurance Company in this State would have no other security, or assurances, on the part of the Phoenix Mutual Life Insurance Company for discharging its contract obligations than the value of said bond with the surety company tendered on the bond of the Phoenix Mutual Life Insurance Company, whose assets in this State are about $60,000.00, and which is surety on bonds for insurance companies in this State in excess of $600,000. That any other surety company that might be offered as surety by the Phoenix Mutual Life Insurance Company has assets in this State of
43 not more than $20,000, and is surety on bonds far in excess of $20,000. That, in the event good and valid securities are deposited with your Respondent as a condition and prerequisite for the issuance of the license sought by the Phoenix Mutual Life Insurance Company, the holders of policies issued by the Phoenix Mutual Life Insurance Company in this State would have a far more complete, safe and adequate security than if the bond tendered by the Phoenix Mutual Life Insurance Company, or by any other company, was accepted as a condition and prerequisite to the granting of said license, and your Respondent verily believes that it is to the best interest of the policy holders in said company, residing in said State of South Carolina, that good and valid securities be deposited as a condition upon which said license shall be issued.

Wherefore, your Respondent prays that the petition be dismissed with costs.

J. FRASER LYON,
Attorney General.

STATE OF SOUTH CAROLINA,
County of Richland:

Personally came Fitz H. McMaster, Insurance Commissioner of South Carolina, who, being duly sworn, says that the allegations contained in the foregoing answer and return are true to his own knowledge, except as to matters stated on information and belief, and that these matters he believes to be true. That Respondent's information is obtained from records now on file in his office, and from statements made to him by representatives of the Phoenix Mutual Life Insurance Company, and of other insurance companies.

FITZ H. McMASTER.

Sworn to and subscribed before me this 20th day of April, 1912.

[SEAL.] CARLTON W. SAWYER,
Notary Public for South Carolina.

44 *Traverse of Petitioners to Return of Respondent.*

Filed May 3, 1912.

THE STATE OF SOUTH CAROLINA:

In the Supreme Court.

STATE OF SOUTH CAROLINA ex Relatione LOUIS SHERFESEE and Frank F. Covington, Each and Both of Them Citizens and Residents of the State of South Carolina, Petitioners,

versus

FITZ H. MCMASTER, as Insurance Commissioner of the State of South Carolina, Respondent.

Traverse of Petitioners to Return of Respondent.

And now comes the Relators and petitioners herein and traverse the Return of the Respondent and by way of traverse say,

Referring to the Third (3) Paragraph of the Return, this Petitioner and Relator denies that the Respondent herein, F. H. McMaster, Insurance Commissioner, ever offered to Phoenix Mutual Life Insurance Company, to receive from it a deposit of such other securities of recognized value as it might have tendered, as alleged by the Respondent in his said Return, but, on the contrary, these Petitioners most positively aver and allege that at no time either to Phoenix Mutual Life Insurance Company itself or to any of its agents or servants, was any statement made by the Respondent that he would receive absolutely and in lieu of South Carolina securities, for the purpose of issuing a license for the year 1912-1913, to it, "any securities of recognized value as said Company might have tendered;" and that no opportunity was given to it, or them, to make such tender; but that, on the contrary, the Respondent has
45 persistently and continuously insisted on his demand that South Carolina securities be deposited and openly declared in writing that one of his reasons was that he found that investment in local securities was accomplished to some extent by the requirement to deposit such local securities and hence was caused to be written by the Respondent his official letter of the eighth day of July, 1911, set out in full in the petition herein and to which reference is especially craved.

And your Petitioner further submits that it is now too late for the Respondent in prejudice of the rights of these Relators and Petitioners already accrued, after the refusal of the Respondent to accept the tender made by Phoenix Mutual Life Insurance Company, to come in at this late day by way of his Return herein, and say that he would have received from said Company, as he has alleged, he has received from other Life Insurance Companies, a deposit of "such other securities of recognized value as the Petitioner might have tendered." Whereas, in fact, this Petitioner alleges that

the open continuous attitude of the Respondent has been to insist on the deposit of South Carolina securities as a means of securing investments in South Carolina securities, and the Petitioner further shows that on the 16th day of March, 1912, the Respondent wrote to the Gulf and Atlantic Insurance Company the proposed surety of the Phoenix Mutual Life Insurance Company the following letter:

"Insurance Department of South Carolina.

Fitz Hugh McMaster, Commissioner.

COLUMBIA, S. C., March 16, 1912.

Gulf and Atlantic Insurance Co., Columbia, S. C.

DEAR SIRS: I am returning herewith the bond of the Phoenix Mutual Life Insurance Company of Hartford. I am unable to accept a bond from this company unless they will furnish me with an affidavit showing that at least one-fourth of its reserve on
46 South Carolina policies has been invested in the securities named in the Act of 1910.

Very truly,
(Signed) F. H. McMASTER,
Insurance Commissioner."

And sent a copy thereof to said Company which it received on the 19th day of March, 1912, and said Company again on the 20th day of March, 1912, made upon the Respondent its formal demand for license as follows:

"PHOENIX MUTUAL LIFE INSURANCE COMPANY,
HARTFORD, CONN., March 20, 1912.

Hon. F. H. McMaster, Insurance Com'r, Columbia, S. C.

DEAR SIR: Application is hereby made for license to this Company to transact the business of life insurance in the State of South Carolina for the year beginning April 1, 1912.

We enclose herewith check to your order for $150 to pay the required license fee. Also enclosed please find Gulf and Atlantic Insurance Company's surety bond in the sum of $20,000, being similar to this Company's bond accepted by you in the past.

Please issue formal certificate of authority, acknowledge receipt of enclosures and send us voucher for our remittance.

Your very truly,
(Signed) H. E. JOHNSON,
Assistant Secretary."

"PHOENIX MUTUAL LIFE INSURANCE COMPANY,
HARTFORD, CONN., March 21, 1912.

Hon. F. H. McMaster, Ins. Commissioner, Columbia, S. C.

DEAR SIR: Enclosed please find requisition for licenses for twenty-one agents, for the year beginning April 1, 1912,
47 together with check for $10.50 drawn to your order in payment of fees.

Please issue licenses and voucher for remittance in due course, and oblige,

Yours very truly,

(Signed) H. E. JOHNSON,
Assistant Secretary."

(Enc.)

And your petitioner alleges that in a written, official communication in the month of March 1912, just immediately previous to the formal tender made by the said Company, the Respondent plainly declared and reiterated his insistence and determination that his, the Insurance Department, would only receive on deposit, South Carolina, State, County or Municipal Bonds, First Mortgage Bonds of real estate in the State, First Mortgage Bonds of solvent domestic corporations whose property was situate entirely within the State, or time certificates of deposit of Banks within the State, and refused to commit himself in any manner, shape or form, to give any extension of time whatever, positively, within which any Life Insurance Company would be allowed to invest in South Carolina securities, either by way of complying with his demand, that there should be invested ¼ of the reserve on South Carolina policies in South Carolina securities, or for the use of South Carolina securities, up to the amount of $20,000.00, as a deposit for the purpose of securing a license for the year 1912-1913, all of which was communicated to Phoenix Mutual Life Insurance Company.

And your Petitioner further shows that in declining the tender made by said Company, as set forth in the Petition herein, the Respondent stated that he insisted upon a deposit of securities acceptable to the Insurance Commissioner in the sum of $20,000.00, and in his previous letters and communications he had in each and every case insisted that such securities acceptable to him for permanent deposit with him would only be such as are set out in his circular letter of July 8, 1911, and made a part of the original Petition herein.

Referring to the Fourth (4) Paragraph of said Return, these Petitioners insist that the Respondent did make the require-
48 ment that said Company should invest at least one-quarter of its reserve on South Carolina Policies in South Carolina securities, or upon its failure so to do, that it would not be allowed to give a surety company bond, but must deposit South Carolina securities.

Your Petitioners further show that wherever a surety company has qualified to do business in South Carolina and has been licensed by the Respondent herein, as Insurance Commissioner, it is in law a good and sufficient surety upon all bonds prescribed by the Statute to be taken, until the Respondent as such Insurance Commissioner, shall revoke the license of such surety company and that the security of a surety bond of such company is as good security to the Respondent and the State of South Carolina and the citizens thereof, as a bond of any similar company for any other class of company, whether life, fire, marine or casualty, and that so long as such com-

pany is licensed by the Respondent, the amount of assets which it may have within its control is immaterial, so long as its license remains unrevoked and that the fact that the Respondent receives such surety bonds from other companies and accepts them as good security compels him in fairness and justice to receive the same bond of the same company from this Petitioner.

Your Petitioners further show that the South Carolina policy holders are not benefitted by the investment of the funds of the said companies in South Carolina securities, but that any benefit derived inures to the general community of the State of South Carolina and not to its policy holders as a class.

Your Petitioners further show that the Atlantic and Gulf Insurance Company, the surety upon the bond tendered herein, has been duly licensed by the Respondent, and has a reserve sufficient to answer to all of its liabilities and that of the Respondent is of the opinion that such is not the case, then he should have revoked, or may now revoke, the license of said company, although the Respondent has already accepted the bond of the said Atlantic and Gulf Insurance Company from other insurance companies not only life, but fire and other classes and for the Years 1910 and 1911 had accepted from this Petitioner the bond of said Company.

49 Referring to the Seventh (7) Paragraph thereof, these Petitioners allege that before the Meeting of the Senate Committee on Banking and Insurance held in the City of Columbia, in its Committee Room, on the 13th day of February, 1912, the Respondent herein did read and subsequently furnish to the counsel of the Petitioner, a written statement as follows, to wit:

"Copy of Statement Made by Commissioner McMaster on Senator Ginn's 75% Reserve Bill Before Senate Insurance Committee, February 13th, 1912.

I come by invitation of your Chairman to say only a few words as to the bill before you. At first I asked to be excused from saying anything, but reflection convinces me that I would be false to the truth as I see it, I would falter in a duty to the people of South Carolina to serve them to the best of my ability, and I should fail to fill in properly the record if I did not say to you that, after four years of the severest study I have ever given to any subject, conscious of the effects of such legislation and fully mindful of my position—the bill contains the true principle for the greatest prosperity of the State and presents the one and only means of ridding the whole country of the greatest and most irresponsible money trust not only that America but that the world has even seen.

I have poured out my soul to you in my report, which is on your desks. The indisputable facts and figures therein given prove to my mind conclusively the correctness and desirability of the bill before you.

The bill which I presented—the three per cent. bill—is a weak, a very weak compromise, and it was presented only because I knew the power of the forces, hidden and far-reaching, which would be arrayed against this form of legislation. But it would not have

been the weak compromise that it is, if I had not felt assured of support which it did not receive.

I have no more to say. I only ask you gentlemen of the
50 Committee, who will be here next year, to remember the fair promises made by the representatives of the insurance companies opposing this bill. Next year I will give you their sworn statements to show how those promises have been fulfilled."

These Petitioners deny that said Company has authorized any one at any time to state for it that it would withdraw from the State of South Carolina; that true it is that Louis Sherfesee, the Manager of this Petitioner in South Carolina, did state to the Respondent that he feared that if the Company was compelled to invest ¼ of its reserve in this State, that it would withdraw and he would lose his business, but said Company has never of itself authorized that this statement should be made.

On information and belief your Petitioners aver that the Respondent herein has accepted a surety bond from other life insurance companies as a condition of license for the year 1912-1913, prior to the 1st of April, 1912, without such company or companies having invested in this State at least 25% of their reserve on South Carolina Policies, as demanded by Respondent.

Phoenix Mutual Life Insurance Company, at the proper time, will determine, in case of the passage of such legislation, whether it will or will not withdraw from the State of South Carolina, and these Petitioners aver, as in the original Petition stated, and pray that they may be granted the relief as originally craved therein.

Wherefore your Petitioners pray as in the original Petition set forth and prayed and submit themselves to the Court invoking its aid as therein prayed.

MORDECAI & GADSDEN,
RUTLEDGE & HAGOOD,
Petitioners' Attorneys.

Charleston, S. C., May 2, 1912.

51 STATE OF SOUTH CAROLINA,
Charleston County:

Personally appeared before me Louis Sherfesee, one of the Petitioners who, being duly sworn, says that the foregoing traverse is true of his own knowledge, except as to the matters therein stated to be on information and belief, and as to those matters, he believes them to be true.

LOUIS SHERFESEE.

Sworn and subscribed to before me this 2d day of May, 1912.

CHARLES L. PEARLSTINE,
Notary Public.

52 *Order of Consolidation and Reference.*

Filed May 3, 1912.

STATE OF SOUTH CAROLINA:

In the Supreme Court.

THE STATE OF SOUTH CAROLINA ex Relatione PHOENIX MUTUAL Life Insurance Company, a Body Corporate under the Laws of the State of Connecticut, Having its Principal Place of Business in the City of Hartford, in the State of Connecticut, and Duly Licensed to Do Business in the State of South Carolina, Petitioner,

versus

FITZ H. MCMASTER, as Insurance Commissioner of the State of South Carolina, Respondent.

THE STATE OF SOUTH CAROLINA ex Relatione LOUIS SHERFESEE and Frank F. Covington, Each and Both of Them Citizens and Residents of the State of South Carolina, Petitioners,

versus

FITZ H. MCMASTER, as Insurance Commissioner of the State of South Carolina, Respondent.

By consent of counsel, it is ordered, That the cases above stated be consolidated and heard together.

53 It is further ordered, That the said causes be, and the same are hereby referred to A. D. McFaddin, Master of Richland County to take such testimony as may be presented to him by any party to the cause, and report the same to this Court.

It is further ordered, That any of the parties hereto may take such testimony as they may desire without the State in any of the usual ways provided by statute for the taking of such testimony.

(Signed) EUGENE B. GARY,
Chief Justice.

We consent:

(Signed) MORDECAI & GADSDEN,
RUTLEDGE & HAGOOD,
Attorneys for Petitioners.

(Signed) J. FRASER LYON,
Attorney for Respondent.

54 *Special Master's Report.*

Filed December 2, 1912.

THE STATE OF SOUTH CAROLINA:

In the Supreme Court, November Term, 1912.

County of Richland.

THE STATE OF SOUTH CAROLINA ex Relatione PHOENIX MUTUAL Life Insurance Company, a Body Corporate under the Laws of the State of Connecticut, Having its Principal Place of Business in the City of Hartford, in the State of Connecticut, and Duly Licensed to Do Business in the State of South Carolina, Petitioner,

against

FITZ H. MCMASTER, as Insurance Commissioner of the State of South Carolina, Respondent.

THE STATE OF SOUTH CAROLINA ex Relatione LOUIS SHERFESEE and Frank F. Covington, Each and Both of Them Citizens and Residents of the State of South Carolina, Petitioners,

against

FITZ H. MCMASTER, as Insurance Commissioner of the State of South Carolina, Respondent.

Special Master's Report.

To the Supreme Court of the State of South Carolina, November Term, 1912:

I, the undersigned A. D. McFaddin, Special Master, have to report:

55 Pursuant to the order of reference, signed by Honorable Eugene B. Gary, Chief Justice, and dated 1 May, 1912, wherein the above entitled causes were consolidated and referred to the undersigned, as Special Master, "to take such testimony as may be presented to him by any party to the cause and report the same to this Court," I held a reference therein, attended by the counsel of record, and took the testimony, which I beg herewith to report, together with a deposition duly taken in said causes and filed with me.

All of which is respectfully submitted.

A. D. McFADDIN,
Special Master.

13 November, 1912.

Evidence.

Filed Dec. 2, 1912.

COLUMBIA, S. C., 7 November, 1912.

Pursuant to the order of reference herein, signed by Hon. Eugene B. Gary, Chief Justice, and dated 15 May, 1912, wherein the above entitled cause was referred to A. D. McFaddin, Master for Richland County, "to take such testimony as may be presented to him by any party to the cause, and report the same to this Court," I this day held a reference herein.

Present: T. M. Mordecai, Esq., Attorney for Petitioner; M. P. De Bruhl, Assistant Attorney General, Attorney for Respondent.

Mr. Mordecai calls attention to the paragraph in said order of the Supreme Court which reads as follows:

"It is further ordered, That any of the parties hereto may take such testimony as they may desire without the State in any of the usual ways provided by statute for the taking of such testimony."

Pursuant to the terms in such stipulation, the following
56 testimony was taken by deposition and offered and received in evidence in the cause, to wit:

Pursuant to the order of the Supreme Court of the State of South Carolina, dated the 15th day of May, 1912, wherein and whereby it is provided that any of the parties hereto may take such testimony as they may desire without the State of South Carolina in any of the usual ways provided by statute for the taking of such testimony, it is hereby stipulated between Mr. T. Moultrie Mordecai, representing the relator petitioners in the two causes above stated, and Mr. M. P. Du Bruhl, Assistant Attorney General of the State of South Carolina, representing the respondent, that the testimony of the witnesses hereinafter set forth shall be taken stenographically by Miss Gertrude E. Johnson and by her transcribed into typewriting, the formality of reading over to the witnesses and the signatures of the witnesses being hereby expressly waived, and that the testimony so transcribed into typewriting shall have the same force and effect as though the same were formally taken before a notary public within the City of Hartford in the State of Connecticut, de bene esse as provided by the Code of Procedure of the State of South Carolina (all formalities being hereby expressly waived).

It is further stipulated that the testimony so taken shall be transmitted by registered mail addressed to the Hon. A. D. McMaddin, Master of Richland County, in the State of South Carolina, appointed Special Master in this cause, at his office in Columbia, S. C., with the title of the cause endorsed thereon, to be taken by him and considered as a part of the testimony presented to him under the order of reference hereinbefore referred to.

The witnesses hereinafter named were duly sworn in proper form of law at Hartford, Connecticut, this 28th day of October.
57 1912, by Mr. George Nichols, Notary Public in and for the State of Connecticut.

Testimony of John M. Holcombe, a Witness on Behalf of Petitioner.

Filed November 7, 1912.

JOHN M. HOLCOMBE, a witness produced on behalf of the relator petitioner, being duly sworn, deposes and says:

Direct examination.

Mr. MORDECAI:

Q. What is your full name, age, residence and occupation?

A. John H. Holcombe; age, 64; residence, Hartford, Connecticut; occupation, President Phoenix Mutual Life Insurance Company.

Q. How long, Mr. Holcombe, have you been President of the Phoenix Mutual Life Insurance Company?

A. About seven years.

Q. How long have you been connected with the company in any capacity other than that of President?

A. Since 1874, as Assistant Secretary, Secretary, Vice-President and President.

Q. Mr. Holcombe, is the Phoenix Mutual Life Insurance Company a stock or a purely mutual company?

A. Purely mutual.

Q. How long has it been a purely mutual company?

A. Since about 1893.

Q. Mr. Holcombe, in the years that you have been connected with this company in the various capacities you have stated is it practicable for a purely mutual company to deposit its assets in forty-eight States of the Union consistently with the administration of the company's affairs for the benefit of its policyholders?

A. No, I do not think so.

Q. Why not?

A. Because the affairs of a mutual life insurance company must be conducted from a central or home office. At that point the premiums must be received and the policy obligations must be considered and met. These policy obligations consist of death claims, surrender values, policy loans—all of which are provided for in the policy contracts and which must be met as they occur. While
58 we can calculate with considerable certainty upon the death claims and we know the maturing endowments, yet what the obligations will be from time to time for surrender values provided for in policy contracts, and policy loans, we cannot possibly tell. They may be greater in a particular section in one year than they are in another. The necessities of policyholders in some sections of the country may in one year or season be much greater than they are at some other time. If the assets of the company were scattered in the different States of the Union according to the reserves that existed on policies in those States, it is as certain as anything can be that the time would come when the demands from policyholders in certain sections would be so great that they could not be met with the funds in those particular sections, and the assets being locked

up in the different States of the Union it would be, it seems to me, certain that at some time the company could not by any possibility meet its obligations to individual policyholders as they might come up. That is one reason, sir, why in my opinion the principle involved would work absolute disaster at some time in the great future.

Q. Mr. Holcombe, what is the principle upon which a mutual life insurance company makes its investments in relation to the best interest of the policyholders?

A. The principle that should be followed and is, I believe, generally—certainly in the case of this company—is to regard the rights of the individual policyholder liberally and fairly; to take the money which is received from premiums in amounts large and small and by reason of the accumulation of these funds in large sums to invest same where the best results can be obtained, not only the best results in security but the best results in the matter of a return in the shape of interest on those investments.

Q. That being so, is the locality where you invest determined by the reserve which you have on policies in that locality,
59 or by some other principle? If so, what?

A. It has no relation whatever to the reserves in different localities. The policy of the finance committee has been from the first (and that is more than fifty years) to invest its funds chiefly in mortgage loans where through a knowledge of the country, through connections chosen with care for their intelligence and honesty and skill the best securities can be obtained together with the best rates of interest.

Q. In view of the policy your company has followed for many years what is the class of securities you invest in in preference to others?

A. Loans upon real estate. About 60 per cent. of our gross assets are mortgage loans.

Q. Is the practice of making loans on real estate in any one State one which can be changed with facility at any time, or is it dependent upon certain conditions which have to be established in that State?

A. We consider that it is dependent upon certain conditions. We refuse, not daily perhaps, but very often, to make scattering investments in different sections of the country, although for various reasons we are urged to do so. We are urged by agents who think their business may be improved; we are urged by individuals who seek to show that they have got some peculiarly good security and an excellent rate of interest. But we refuse to take under consideration scattering investments, believing that the best course is the one which has produced such good results in the past; that is, to invest money in those sections where long experience has shown that the securities are satisfactory, where men who have served the company satisfactorily can be relied upon to make good investments and where the volume of business is such as to warrant the loan agent in establishing and maintaining his organization for examining properties, abstracts of title and the necessary papers, closing

the loan at the outset, collecting the interest, seeing that the taxes are paid, that the fire insurance, if there is any, is kept in
60 force, and all the details which are necessary in order to make a safe and good investment.

Q. Has the reserve on policies in a State anything to do with your investing in that State?

A. It isn't a matter that is considered by the finance committee.

Q. Have you ever considered the question of the amount of the reserve as an important element in determining the place of investment?

A. It has never been any element at all in making these loans.

Q. If you had invested for this company say in South Carolina State bonds the total amount of your reserve would there be anything to prevent your company at your discretion from disposing of those bonds and investing in other securities?

A. I know of nothing.

Q. So that if you were to buy tomorrow $100,000 of State bonds in South Carolina and put them into your vaults, and your Finance Committee should determine six months from now to sell them, there would be nothing to prevent your doing so?

A. I know of nothing.

Q. Would there be anything, Mr. Holcombe, to prevent you, notwithstanding your investment of $100,000, for example, in South Carolina State bonds and your sale of the same in due course of administration, to prevent you from withdrawing from the State of South Carolina?

A. I know of nothing.

Q. Would not that leave the policyholders of the State of South Carolina as defenseless against the company which had no assets in South Carolina as it would be against one that had?

A. I know of no difference.

Q. Now, the Commissioner of Insurance of South Carolina is claiming in this proceeding the right to require you to take out of your assets in the State of Connecticut either cash or securities representing the value of $20,000 and invest such $20,000 in South Carolina securities to be deposited with the Commissioner at Columbia, in South Carolina. Can you under the charter of your
61 company and the law of Connecticut so dispose of your assets in Connecticut, buy assets in South Carolina and deposit them in South Carolina?

A. I do not believe that a purely mutual company can properly make a deposit of that kind.

Counsel for the respondent objects to the question and moves to strike out the answer upon the ground that the witness is merely expressing an opinion.

Q. Can your company better furnish a surety company bond in the sum of $20,000 to be deposited with the South Carolina Commissioner than purchase $20,000 of South Carolina securities and deposit with the Commissioner?

A. Yes.

Q. What is the difference so far as the company's assets are concerned, Mr. Holcombe?

A. In the one case we would be furnishing a guarantee to that amount that the company would pay its obligations in South Carolina for which we would pay the premium as a matter of expense. In the other case we would in a way depart from the investment policy of the company conducted successfully for many years.

Q. Mr. Holcombe, will you be kind enough, from any memorandum which you may have in your possession or which may be accessible, to state what on or about the first of April of this year was the total reserve due to South Carolina policyholders, the amount of loans to South Carolina policyholders which you had made upon their policies, and the investments which you have in that State outside of policy loans?

A. Total reserve on South Carolina policies about $360,000; loans on October 1, 1912, about $75,000; other investments $10,000; $85,000 in all.

Q. What percentage about, Mr. Holcombe, is that of your reserve?

A. About 24 per cent.

Q. The Insurance Commissioner in his return makes the statement that he would have received from your company, as
62 he has received from other companies, a deposit of such other securities of reorganized value other than South Carolina securities as the petitioner might have tendered. Did the Commissioner of South Carolina ever offer to receive from you on deposit securities other than South Carolina securities?

A. Not to my knowledge.

Q. You are the executive head of this company. Have you ever seen any correspondence which indicated any such intention on the part of the Commissioner?

A. Not to my knowledge.

Q. I hand the witness petitioner's Exhibit "A," being a communication from the Insurance Commissioner of South Carolina addressed to the Phoenix Mutual Life Insurance Company of Hartford, Connecticut, dated July 8, 1911. Have you ever seen that circular before?

A. Yes.

(Exhibit "A" offered in evidence.)

Q. Mr. Holcombe, so far as your policyholders in South Carolina are concerned, prior to the first of April, 1912, had you any unsatisfied, unsettled or contested claims in South Carolina?

A. No.

Q. Since the first of April, 1912, what is the condition as to such matters?

A. There are no unsatisfied claims at this time and have not been since that time. The claims of our policyholders for death claims, matured endowments, cash values for their policies and loans on their policies are satisfied immediately upon receipt at this office.

Interrupted.

Mr. De Bruhl:

Q. Mr. Holcombe, you said that your company had been entirely mutual since 1893. Did you have stock before that?

A. Yes, but it was retired by vote of the policyholders at a meeting of the policyholders held in Hartford, who voted to buy and retire the capital stock. Now it is entirely mutual.

63 Q. You continue to increase every year your surplus?

A. Sometimes it does and sometimes it does not.

Q. Still you do have a large surplus fund?

A. We have a considerable fund which I think is erroneously called surplus. We have a considerable fund which is more properly called a fund to provide for contingencies and fluctuations.

Q. When you issue policies and carry on your business you do business on exactly the same principles and lines as a stock company does business? Is there any difference between the dealings of a mutual company with its policyholders and a stock company?

A. Both companies issue policies on the lives of their members. The one company receives a fixed premium for carrying the insurance. If there is a profit from that transaction the stockholders are benefited by it. If there is a profit in a mutual company the gain and profits all go to the policyholders.

Q. Do they all go to the policyholders?

A. All; everything goes to the policyholders.

Q. When the policyholder dies does he get his full percentage of all the gains in surplus, as you might call it?

A. He gets his entire share of the earnings of the company.

Q. Then the policy results from a mutual company ought to be much larger?

A. They should be. A policy carried in a mutual company, if it is carried to its legitimate end and if the policyholder lives out his days, should cost the policyholder less than in a stock company.

Q. Mr. Mordecai asked — it *is* was possible to invest your moneys in a number of different States, and you said it was not, because, for one reason, of the the claims for policy loans and other claims. Do you ever have to disturb your investments to meet those claims?

A. We never have.

Q. Would you disturb any investments to make loans to policyholders?

A. We never have disturbed investments in the sense that you mean, I am sure. We have never been obliged to sell securities.

64 Q. You wouldn't call in a real estate loan for the purpose of making a loan to a policyholder?

A. We wouldn't if we didn't have to, and we never have had to so far. But we have been increasing; our income has been larger than has been necessary to meet our policy obligations for a good many years which has resulted in an increasing fund for investment and naturally an increasing fund that can be drawn upon for any purpose. The time may come; it is probable that the time will come, not this year or next, but in the future—and life insurance is a look ahead—when this expansion will stop, when the life insurance

companies will not go on increasing their assets and income as rapidly as they have been doing, or perhaps at all. A great many new companies have been organized who take considerable part of the business which is going. And when the time comes, if it should come, when a company's assets shall be at a standstill, when its income would be no more than sufficient to meet its policy obligations, then would come the danger that the demand of policyholders in sections would be greater than the company's income to meet them.

Q. At present you have never seen any indications of a result of that sort within the next few years, say twenty or twenty-five ?

A. No.

Q. On the contrary, you have been, as the years have gone on, better able to meet those claims of policyholders without disturbing your investments?

A. Yes. But it must be remembered that this company now has on its books policies more than sixty years old. We are now issuing policy contracts that will still be in force in some shape or another seventy or eighty years hence. We must prepare for the distant future.

Q. Of course, but the business is as likely to do as well in the future as it has in the past?

A. The business of life insurance will increase for many years I personally have no doubt, but we must prepare for all contin-
65 gencies. I must say that it is considered prudent not only by life insurance companies, but by savings banks, to hold a considerable fund, as I have said, improperly, I think, called surplus—a fluctuation fund, a contingency fund—whatever you please to call it; it is considered a part of prudence, in view of the sacred character of life insurance obligations, to hold a considerable fund to provide for possible contingencies in the future. Not what you may call a surplus which can be fairly divided among its policyholders, but a balance. Our mutual saving banks do the same thing. Our savings banks in this part of the country are mutual institutions and the directors of these banks believe that it is best for them and fair for them and proper that they should pay a fixed rate to their depositors, and if there are earnings over and above that rate to set it aside, not for surplus, not for surplus which can be properly apportioned to its depositors, but as a contingency fund to provide for the possibilities of loss in investments, the possibilities of a run in times of panic. The two institutions are the same in many ways.

Q. Do you invest in any other States besides Connecticut?

A. Yes, we do; a good many different States.

Q. How many?

A. We have investments in fourteen States outside of Connecticut.

(See Exhibit B.)

Mr. MORDECAI:

Q. Mr. Holcombe, your total reserve on all your policies amounts in round numbers to about $30,000,000.00. Were you called upon

to loan your full reserve upon every policy that was outstanding would you not be compelled under those circumstances to cash in some of your securities?

A. Certainly.

Q. What do your total assets amount to in comparison with your liabilities?

A. Assets about $32,300,000.00 last January; total reserve was $29,695,000.00.

66 Q. So that if you had to loan every dollar that your policyholders were entitled to claim it would amount to a liquidation of the company, would it not?

A. Practically.

Q. So that, Mr. Holcombe, if in time of stress or panic such as occurred in 1907 your policyholders were to demand loans on their policies, you would be compelled under such conditions, if the loans were abnormal in amount, to liquidate your securities to meet those demands?

A. Undoubtedly.

Cross-examination.

Mr. De Bruhl:

Q. Mr. Holcombe, your policies do not entitle your policyholders to borrow the entire assets, do they?

A. Our present policies provide that a policyholder has the right to demand a loan about up to the reserve of his policy.

Q. About what percentage of loans, or at least what does the per cent. of loans that you have made on policies bear to the total assets?

A. Our policy loans are about 12 or 13 per cent. of our total assets.

Q. And your experience then shows that you are not apt to be called on for more than that?

A. This per cent. is increasing.

Testimony of Archibald A. Welch, a Witness for Petitioner.

Filed November 7, 1912.

Archibald A. Welch, being duly sworn, deposes and says:

Direct examination.

Mr. Mordecai:

Q. What is your age, residence and occupation?

A. Age, 53; residence, Hartford, Connecticut; occupation, Second Vice-President and Actuary of the Phoenix Mutual Life Insurance Company.

Q. How long have you been Second Vice-President and Actuary?

A. About seven years.

Q. Mr. Welch, how long have you been connected otherwise with this company?

67 A. Since 1890. As actuary I came in then. Two or three years previous to my election as Vice-President was Assistant Secretary and Actuary.

Q. Who among the officers of this company has had charge of and mostly conducted the correspondence in relation with this dispute in South Carolina that we are now considering?

A. I have, sir.

Q. Handing the witness Exhibit "A" already put in evidence. You received that communication, Mr. Welch?

A. I did, sir.

Q. Now, Mr. Welch (handing to the witness petitioner's Exhibit C, being letter of F. H. McMaster, Insurance Commissioner, addressed to the Gulf and Atlantic Insurance Company, Columbia, S. C., duplicate of original). You received that letter when and how?

A. It came, as I remember it, simply in an envelope from the Insurance Department of South Carolina as a copy of a letter which was sent to the Gulf and Atlantic Insurance Company. There was no letter accompanying it so far as I remember.

Q. Now I hand witness Exhibit D (being the bond of the Phoenix Mutual Life Insurance Company as principal and the Gulf & Atlantic Life Insurance Company as surety to the State of South Carolina, dated the 13th of March, 1912,) and ask him if he executed that bond on behalf of the company and whether it is the bond which was sent to the Commissioner and refused to be accepted by him?

A. I had this executed—at least I asked Mr. Holcombe to execute it. It is the bond which the Insurance Commissioner refused to accept.

Q. I hand the witness petitioner's Exhibit E (being a letter of F. H. McMaster, Insurance Commissioner, to the Phoenix Mutual Life Insurance Company dated 25th day of March, 1912), and ask him whether he received that letter?

A. Yes, sir.

Q. Refreshing your memory, was not the bond enclosed

68 in it?

A. Yes, sir; the bond must have been enclosed in it. It was.

I now offer in evidence plaintiff's Exhibits F and G (being copies of letters of H. E. Johnson, Assistant Secretary, to the Insurance Commissioner of South Carolina). Admitted with consent in place of originals with right on the part of respondent to substitute the originals if desired.

I now offer in evidence letter of F. H. McMaster, Insurance Commissioner, to the Gulf & Atlantic Insurance Company dated March 16, 1912. Exhibit H.

Q. Mr. Welch, in folio 92 of the traverse return of the Commissioner he stated that the Commissioner offered to the Phoenix Mutual Life Insurance Company a deposit of such other securities of recognized value as the petitioner might have tendered, as alleged by the respondent in his return. Was any offer ever made to you or

to the company so far as your knowledge extends by the Commissioner of South Carolina that he would accept on deposit any securities other than those which were specified in the circular letter of July 8, 1911?

A. No such intimation was ever made to me, and had it been made to the company I know it would have come to my attention.

Q. Was any opportunity ever given to you by the Insurance Commissioner to make a tender of securities other than South Carolina securities as covered by the demand of July 8, 1911, Exhibit A?

A. No, sir; not to my knowledge.

Q. Is it or is it not a fact, Mr. Welch, that the Insurance Commissioner has persistently and continuously insisted on his demand that South Carolina securities should be deposited?

A. Either that or the 25 per cent. investment.

Q. Is it not a fact, Mr. Welch, that in the month of March, just immediately previous to the formal tender made by you of the bond in this case, that the Insurance Commissioner stated in writing and insisted that he would receive only the securities named in the Act of 1910?

A. My memory is that.

69 Q. Have you or the company so far as your knowledge extends ever authorized any one at any time to state for it that it would withdraw from the State of South Carolina in case you were compelled to make a deposit in that State or to invest in South Carolina securities?

A. No, sir.

Q. Has any demand of any character been made of you by the Commissioner of South Carolina except to comply with the circular of July 8, 1911, so far as qualifying to do business in that State is concerned?

A. Not that I can recollect.

Q. If a demand had been made it would have come to you in due course?

A. It certainly would.

Q. Is there any other State in the Union of forty-eight States and two territories—Alaska and the District of Columbia—where you are compelled or allowed to deposit securities as a condition of doing business?

A. I think Virginia is the only other State.

Q. How many years ago was that law passed, about?

A. I should say in the neighborhood of fifteen or twenty years ago.

Q. So that in the fifty States and territories of the Union Virginia is the only State. How much do you deposit there?

A. Ten thousand dollars.

Q. Mr. Welch, referring to Section 3607 of the Code of Connecticut, which provides for the deposit of bonds with the State Treasurer as security for all policyholders. Has this company complied with that law?

A. It has, sir.

Q. And is the deposit still in force and effect?

A. It is.

Q. And was it in force and in effect on the 4th day of April, 1912?

A. It was; and I would like to interpolate that it is not for Connecticut policyholders alone, but for the policyholders of the company.

I want to offer in evidence Section 3607 of the Code of Laws of Connecticut, as follows:

"3607. Deposit with State Treasurer. When any State shall require insurance companies of other States to deposit with some officer of such other State securities in trust for policyholders of such companies as a prerequisite to their transacting business in such State, the Treasurer of this State may receive from any insurance company of this State the securities required by the laws of such other State, on deposit; the legal title to such securities shall be transferred to him in trust for the policyholders of such insurance company, and he shall hold such securities in trust for said policyholders; but such company may collect and receive the interest and dividends thereon, and withdraw said securities on depositing with the said treasurer other securities of like character and value. The treasurer shall issue a certificate, under seal, of such deposit for each State which shall require the same, which shall state the items and amount of securities thus deposited, and that he is satisfied that they are of the market value represented therein; but no securities shall be estimated above the par value of the same, nor shall any such securities be withdrawn except as provided in this section."

Cross-examination.

Mr. De Bruhl:

Q. How much is that deposit at the present time, and how much was it last April?

A. It was and is $101,000, and I offer herewith the printed statement sent to the various States by the Insurance Commissioner of Connecticut giving the amount and description of the securities lodged with him, marked Exhibit I.

The Special Master thereupon made and filed his formal report transmitting the foregoing testimony and the Exhibits thereto attached, as follows, to wit:

The following are the Exhibits offered and received in evidence in Hartford, Connecticut, mentioned and referred to in the foregoing testimony there taken:

71 RELATOR'S EXHIBIT A.

Filed December 2, 1912.

Insurance Department of South Carolina.

COLUMBIA, S. C., July 8, 1911.

Phoenix Mutual Insurance Co., Hartford, Connecticut.

DEAR SIRS: Under the law requiri..g insurance companies to make deposits with the Insurance Commissioner, it is within the discretion of the Commissioner to accept a surety bond, or to require the deposit of securities.

This is to notify you that, on the next license year, April 1, 1912, the Insurance Commissioner will ask all companies, which have not invested at least one-fourth of their reserve on South Carolina policies in the securities named in the Act of 1910, to deposit South Carolina securities with the Department. From such companies no surety bond will be accepted.

From companies, which have invested at least one-fourth of their reserves on South Carolina policies in securities of this State, a surety bond may be accepted.

This department will receive on deposit South Carolina State, county or municipal bonds; first mortgage bonds of real estate in the State; first mortgage bonds of solvent domestic corporations, whose property is situate entirely within the State; or time certificates of deposits in banks of the State.

This notice is given now, so that you may provide yourself with such securities as may be satisfactory to you.

Very truly,

(Signed) F. H. McMASTER,
Insurance Commissioner.

72 RELATOR'S EXHIBIT B.

Filed December 2, 1912.

Page 140 of the Connecticut Insurance Commissioner's Report (Life), 1912.

Schedule B—Recapitulation of Mortgage Loans.

Name of State.	Amount loaned.
Arkansas	$3,000.00
Connecticut	126,000.00
Iowa	1,065,850.00
Indiana	312,725.00
Illinois	420,800.00
Kansas	5,097,740.00
Michigan	3,000.00

Missouri	3,771,211.00
Minnesota	884,780.00
Nebraska	2,413,941.73
South Dakota	2,564,875.00
Tennessee	2,800.00
Wisconsin	20,000.00
Oklahoma	2,496,010.00
Mississippi	3,500.00
	$19,186,232.73

RELATOR'S EXHIBIT C.

Filed December 2, 1912.

Insurance Department of South Carolina.

COLUMBIA, S. C., March 16, 1912.

Gulf and Atlantic Insurance Co., Columbia, S. C.

DEAR SIRS: I am returning herewith the bond of the Phoenix Mutual Life Insurance Company of Hartford. I am unable
73 to accept a bond from this company unless they will furnish me with an affidavit showing that at least one-fourth of its reserve on South Carolina policies has been invested in the securities named in the Act of 1910.

Yours truly,

(Signed) F. H. McMASTER,
Insurance Commissioner.

RELATOR'S EXHIBIT D.

Filed December 2, 1912.

STATE OF CONNECTICUT:

Know All Men by These Presents, that the undersigned Phoenix Mutual Life Insurance Company, as principal, of Hartford, Conn., and Gulf and Atlantic Insurance Co., the undersigned, as surety, of Columbia, South Carolina, are firmly held and bound unto F. H. McMaster, as Insurance Commissioner of the State of South Carolina, as his successors in office, in the full and just sum of twenty thousand dollars, to which payment we bind ourselves and our respective successors and assigns jointly and severally firmly by these presents.

Sealed with our seals and dated at Hartford, Conn., this thirteenth day of March, in the year of our Lord one thousand nine hundred and twelve.

The condition of the above bond or obligation is as follows:

Whereas, the laws of the State of South Carolina require a legal reserve life insurance company before doing business in this State

to deposit with the Insurance Commissioner an approved bond or approved securities in the sum of twenty thousand dollars;

And, Whereas, the Phoenix Mutual Life Insurance Company aforesaid, desires to transact business within the State of South Carolina for the year beginning April 1st, 1912, and ending
74 March 31st, 1913, and in accordance with the terms of the laws of the State, desires to deposit with the Insurance Commissioner a good and solvent bond in the sum of twenty thousand dollars, and does by this instrument furnish and file said bond:

Now, Therefore, the condition of the above bond is such, that it shall continue of full force and effect so long as said Phoenix Mutual Life Insurance Company shall do business in this State, or have outstanding contracts therein, or until another bond is lawfully accepted by the Insurance Commissioner, and that if the above bound Phoenix Mutual Life Insurance Company shall well and truly pay or cause to be paid to the said F. H. McMaster, as Insurance Commissioner of the State of South Carolina, and his successors in office, on demand the full and just sum of any and all judgments entered up against the said Phoenix Mutual Life Insurance Company in any court of competent jurisdiction in this State, (any such judgment hereby being declared to be a lien upon this bond), during the time the said Phoenix Mutual Life Insurance Company does business in this State, or has outstanding contracts herein, then this bond to be void and of no effect, otherwise to remain of full force and effect.

In witness whereof the said Phoenix Mutual Life Insurance Company and the said Gulf and Atlantic Insurance Company have set their hands and affixed their seals in the manner and form following:

PHOENIX MUTUAL LIFE INSURANCE CO.
JOHN M. HOLCOMBE, *President.*

Witness as to Phoenix Mutual Life Ins. Co.:
——— ———.

GULF & ATLANTIC INSURANCE CO.
——— ———.

Witness as to R. M. Jones, President:
——— ———.

In the presence of—
HOWARD H. KEEP.
E. C. ELMORE.

75 STATE OF CONNECTICUT,
County of Hartford:

Personally appeared before me Howard H. Keep, who, being duly sworn, says that he saw the within mentioned Phoenix Mutual Life Insurance Company by John M. Holcombe, President, sign, seal, and as its act or deed, deliver the within bond for the uses and

purposes therein mentioned, and that he witnessed the execution of the same.

HOWARD H. KEEP.

Sworn to and subscribed before me this 13th day of March, 1912.

GEORGE NICHOLS,
Notary Public.

STATE OF SOUTH CAROLINA,
County of Richland:

Personally appeared before me E. C. Elmore, who, being, duly sworn, says that he saw the within mentioned Gulf & Atlantic Insurance Company by R. M. Jones, President, sign, seal, and, as its act or deed, deliver the within written bond for the uses and purposes therein mentioned, and that he witnessed the execution of the same.

E. C. ELMORE.

Sworn to and subscribed before me this 16th day of March, 1912.

CARLTON W. SAWYER,
Notary Public for S. C.

RELATOR'S EXHIBIT E.

Filed December 2, 1912.

Insurance Department of South Carolina.

COLUMBIA, S. C., March 25, 1912.

Phoenix Mutual Life Insurance Co., Hartford Conn.

DEAR SIRS: Acknowledgment is made of receipt of your
76 application for license for your company and agents for the year beginning April 1st, 1912; of your check for $150.00, annual admittance fees for the year beginning April 1st, 1912; and of your check for $10.50 for agents' license fees for the year beginning April 1st, 1912. And further acknowledgment is made that you tendered instead of the checks, and the checks are acknowledged as such tender, $160.50 in legal tender, gold coin.

I am returning herewith the bond of the Phoenix Mutual Life Insurance Company in the sum of twenty thousand dollars with the Gulf and Atlantic Insurance Company of Columbia, S. C., as surety.

I shall have to ask the Phoenix Mutual Life Insurance Company to deposit securities rather than a bond.

Very truly,
(Signed) F. H. McMASTER,
Ins. Commissioner.

RELATOR'S EXHIBIT F.

Filed December 2, 1912.

Phoenix Mutual Life Insurance Company.

HARTFORD, CONN., March 20, 1912.

Hon. F. H. McMaster, Insurance Com'r., Columbia, S. C.

DEAR SIR: Application is hereby made for license to this company to transact the business of life insurance in the State of South Carolina for the year beginning April 1, 1912.

We enclose herewith check to your order for $150 to pay the required license fee. Also enclosed please find Gulf and Atlantic Insurance Company's surety bond in the sum of $20,000, being similar to this company's bond accepted by you in the past.

Please issue formal certificate of authority, acknowledge receipt of enclosures and send us voucher for our remittance.

Yours very truly,

(Signed) H. E. JOHNSON,
Assist. Secretary.

77

RELATOR'S EXHIBIT G.

Filed December 2, 1912.

(Copy)

Phoenix Mutual Life Insurance Company.

HARTFORD, CONN., March 21, 1912.

Hon. F. H. McMaster, Ins. Commissioner, Columbia, S. C.

DEAR SIR: Enclosed please find requisition for licenses for twenty-one agents, for the year beginning April 1, 1912, together with check for $10.50 drawn to your order in payment of fees.

Please issue licenses and voucher for remittance in due course, and oblige,

Yours very truly,

(Signed) H. E. JOHNSON,
Assistant Secretary.

RELATOR'S EXHIBIT H.

Filed December 2, 1912.

Insurance Department of South Carolina.

COLUMBIA, S. C., March 16, 1912.

Gulf and Atlantic Insurance Co., Columbia, S. C.

DEAR SIRS: I am returning herewith the bond of the Phoenix Mutual Life Insurance Company of Hartford. I am unable to ac-

cept a bond from this company unless they will furnish me with an affidavit showing that at least one-fourth of its reserve on South Carolina policies has been invested in the securities named in the Act of 1910.

Very truly,
(Signed) F. H. McMASTER,
Ins. Commissioner.

78 RELATOR'S EXHIBIT H.

Filed December 2, 1912.

Gulf and Atlantic Insurance Company.

Statement as of Date December 13, 1911.

Officers—A. W. Jones, President; A. W. Jones, Secretary; W. S. Reamer, Treasurer.

Directors—A. W. Jones, W. S. Reamer, Geo. S. Mower, D. A. Spivey, C. K. Henderson, J. T. Simmons, Jas. A. Hoyt, D. O. Herbert.

Incorporated December 1, 1908; commenced business December 1, 1908. Home office, Columbia, S. C. Subscribed capital, $38,630.00; capital actually paid in, $38,160.00.

Amount of ledger assets Dec. 31, 1910.....	$45,995.74	
Increase in paid-up capital during year....	2,060.00	
Extended at		$48,055.74

Income.

Gross premiums written and renewed during year	$6,794.90	
Return premiums on policies cancelled and not taken	122.00	
Net premiums		$6,672.90
Gross interest received.....		1,731.29
Total resources		$56,459.93

Disbursements.

Commissions and brokerage.....	$370.95	
Salaries, fees and other compensations of officers, directors, trustees and office employees	1,239.50	
Exchange on bank deposits.....	3.69	

	Interest on note, Palmetto Bank	4.78	
	Insurance Department License fee	40.00	
79	Taxes—State, city and county and all other licenses, fees and taxes	844.97	
	Legal expenses	129.90	
	Printing and stationery	41.40	
	Postage, telephone, telegraph and express	46.90	
	Stockholders for interst or dividends	2,054.38	
	Miscellaneous expenses	44.65	
	Total disbursements		$4,821.12
	Balance December 13, 1911		$51,638.81

Ledger Assets.

Mortgage loans	$9,500.00	
Collateral loans	31,750.00	
Stock in Abbeville Insurance and Trust Company	280.00	
Bonds per Schedule D	6,000.00	
Deposits in banks not on interest	94.28	
Deposits in banks on interest	3,996.20	
Bills receivable	18.33	
		$51,638.81

Non-ledger Assets.

Interest accrued on mortgage loans	$670.60	
Interest accrued on collateral loans	1,777.71	
Premiums in course of collection	181.00	
Total non-ledger assets		$2,629.31
Total gross assets		$54,268.12

Liabilities.

	Reserve (unearned premiums)	$3,285.70	
	Commissions due	15.00	
80	Special reserve for losses	1,800.00	
	Proprietary:		
	Capital paid in	38,160.00	
	Surplus over all liabilities	11,006.82	
	Total liabilities		$54,268.12

Relator's Exhibit I.

Filed December 2, 1912.

Office of the Treasurer of the State of Connecticut, Hartford, Conn.

To all whom it may concern:

I, —— —— do hereby certify that I am the Treasurer of the State of Connecticut, and that by virtue of such office, I hold as Trustee by succession, in accordance with the provisions of the statute in such cases made and provided, in trust for all the policy-holders of The Phoenix Mutual Life Insurance Company, a corporation, incorporated by the Legislature of this State, and located in the City of Hartford, the securities hereinafter specified and itemized, which said securities have hitherto been deposited by said Phoenix Mutual Life Insurance Company, either with my predecessors in said office, or with myself since I became such Treasurer.

I further certify that I am satisfied that the market value of said securities, as given in the following schedules, *are* correct.

Said securities now held by me are as follows:

81 *Schedule of Securities.*

No.	Name of mortgagor.	Date of mortgage. When given.
*28,571	Ann A. Gridley et al	Jan. 31, 1899.
‡29,078	Olds & Whipple	July 1, 1899.
34,039	Olds & Whipple	Dec. 4, 1902.
†32,594	Hartford Real Estate Improvement Co	Feb. 15, 1902.

Record of mortgage. City.	Book.	Page.	Amount of principal unpaid.	Value of mortgaged premises.
Hartford, Conn.	266	240	$25,000	$60,000
Hartford, Conn.	264	524		
Hartford, Conn.	274	102	25,000	50,000
	294	133		
Hartford, Conn.	289	52	51,000	182,000

Location and Description of Mortgaged Premises.

*No. 28,571. Business Block, Pearl Street, Hartford, Conn.

‡No. 29,078. 34,039. } Business Block, Grove and Commerce Streets, Hartford, Conn.

†No. 32,594. Nos. 1 to 24, inclusive, Columbia Street; Nos. 445, 447, and 449 Capitol Avenue; Nos. 245, 246, 248, 249, 250, 252, and 254 Putnam Street, Hartford, Conn., and Park Terrace 1A, 2, 3, 4, 5, 6, 7, 8, 9, 10.

Total amount of said securities.....$101,000

And in further pursuance of said statute I give this certificate.
In Witness Whereof, I have hereunto set my hand and official seal at the City of Hartford, this — day of —— A. D. 191—.

——— ———,
State Treasurer.

STATE OF CONNECTICUT, SECRETARY'S OFFICE.

To whom it may concern:

Know ye, That —— ——, of —— in the County of ——, whose signature to the above certificate I hereby certify to be true and genuine, was, in accordance with the laws of this State, on
82 the — day of January, A. D. 191—, duly declared elected as Treasurer of the said State of Connecticut, for the term commencing on the — day of January, A. D. 191—, and ending on the — day of January, A. D. 191—, and has taken the necessary oath and filed the requisite bond to enable him to discharge his official duties.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said State of Connecticut, at Hartford, this — day of —— in the year of our Lord one thousand nine hundred and —.

——— ———,
Secretary of State.

Mr. Mordecai calls attention to the agreement of counsel as to the taking of testimony in the office of the Insurance Commissioner for South Carolina, dated New York City, October 30, 1912, and signed T. Moultrie Mordecai, Attorney for Petitioner, and M. P. DeBruhl, Assistant Attorney-General, Attorney for Respondent, the same being in the following terms, to-wit:

Stipulation of Counsel.

Filed December 2, 1912.

In the Supreme Court of South Carolina.

THE STATE OF SOUTH CAROLINA, ex Rel. PHOENIX MUTUAL LIFE INSURANCE COMPANY, Petitioner,

vs.

F. H. MCMASTER, Insurance Commissioner, Respondent.

THE STATE OF SOUTH CAROLINA, ex Rel. LOUIS SHERFESEE et al., Petitioner,

vs.

THE SAME.

Whereas, numerous witnesses were about being examined in the cities of Hartford, Conn., Newark, N. J., Borough of Man-
83 hattan in the State of New York, on behalf of the petitioner, whose testimony would mainly consist of identifying and

proving numerous official documents and correspondence which have passed between various insurance companies and the Commissioner of Insurance of the State of South Carolina, and

Whereas the taking of such testimony in order to prove such records and correspondence can be much more readily done by the production of the records from the office of the Insurance Commissioner of South Carolina at Columbia, South Carolina.

Now therefore it is stipulated between counsel that the records and correspondence hereinbefore referred to shall be produced before the Master appointed to take the testimony in this cause, with the same force and effect as though the same were produced by said hereinbefore recited Commissioner. Nothing herein contained to prevent any objection being made to the relevancy, competency or sufficiency of this evidence the purpose of this stipulation being mainly to save time and unnecessary expense.

New York City, New York, October 30, 1912.

(Signed) T. MOULTRIE MORDECAI,
Attorney for Petitioner.

(Signed) M. P. DE BRUHL,
Asst. Atty. Gen'l, Attorney for Respondent.

Pursuant to the foregoing stipulation and the order of reference to the undersigned Special Master hereinabove set out, the following testimony was taken in the office of the Insurance Commissioner for South Carolina, on the 7th day of November, 1912, to-wit:

84 *Testimony of F. H. McMaster, a Witness on Behalf of Petitioner.*

Filed December 21, 1912.

F. H. MCMASTER, being duly sworn, testified as follows:

Direct examination.

By Mr. MORDECAI:

Q. Will you be kind enough to identify this letter of January 13, 1912, which you addressed to Mr. Louis Sherfesee, the General Agent of the Phoenix Mutual Life Insurance Company of Hartford, Connecticut?

A. Yes, sir; that is my letter.

Said letter offered and received in evidence and marked Plaintiff's Exhibit "G" 1.

Q. I hand to the witness the circular letter of the Insurance Department of South Carolina, dated July 8, 1911, Relator's Exhibit "C." I would like to ask the Commissioner if he will be kind enough to state whether or not any insurance company which was licensed by the Commissioner to do business for the fiscal year of 1912 deposited with the Commissioner securities other than those specified in that circular as a condition of their being licensed to do

business for that year, and, if so, I ask him to enumerate the companies and character of deposits which they then made, and which provision having been made was accepted as a condition for the issuance of the license for the current fiscal year?

A. Two companies, so far as my recollection goes, and I think it is correct, deposited securities other than those named in this letter, on April 1st, 1912, as a condition precedent to secure license to do business in this State for the year commencing on that date. They were the Pacific Mutual Life of Los Angeles, California, and the Hartford Life of Hartford, Connecticut. The Pacific Mutual Life Insurance Company deposited with me 25 bonds of the California Gas and Electric Corporation of the value of $1,000.00 each, the total value $25,000.00. The company had been promising to make investments in this State, but up until that time had not yet completed its arrangements so to do, and stated that it would do so just as soon as was possible, or practically immediately.
85 Therefore, these securities were accepted temporarily and have since been replaced by bonds and mortgages on real estate in South Carolina. The Hartford Life first deposited a certificate of deposit in a Hartford bank and since has replaced this with South Carolina securities.

Q. Have you not omitted the case of the Florida Life Insurance Company?

A. I am coming to that company now. The following four companies, when they were first licensed under this Act in 1909, deposited with me securities other than those in South Carolina, which securities have remained in my possession and on which their licenses have been renewed from year to year since April 1st, 1909: The Florida Life Insurance Company of Jacksonville, Florida; The North State Life Insurance Company of Kinston, North Carolina, and the Union Central Life Insurance Company of Cincinnati, Ohio, and the Philadelphia Life of Philadelphia, Pennsylvania.

These companies have promised to make South Carolina investments and replace their securities by South Carolina securities, but at the present time the only two of these four which have done this are the Union Central Life of Cincinnati, Ohio, and the Philadelphia Life, which have replaced the outside securities by mortgages on real estate or other South Carolina securities.

The Florida Life and the North State Life are both very small companies, doing comparatively small business in South Carolina, the North State Life reserve on South Carolina policies being approximately $7,000.00 and the reserve of the Florida Life on South Carolina policies being, approximately $4,000.00. The correspondence between this department and both of those companies has been persistent and continuous with respect to replacing their securities, but up to the present time the securities have not been
86 replaced by South Carolina securities. They have North Carolina and Florida securities deposited.

Q. Mr. Commissioner, in life insurance, does the strength of a company depend solely upon the extent of the company's business,

or is it not based upon the proportion of reserve to the insurance outstanding?

A. Yes, sir; it is based upon the reserve.

Q. So that it is as important to require a reserve from the small company as it is to require it from a large company for the protection of the policyholders?

A. Yes, sir.

Q. Is there any distinction between requiring a reserve from a small company and a large company?

A. No, there is not.

Q. Then, Mr. Commissioner, the fact that a small company fails to deposit a reserve is as dangerous to the policyholders of that company as though a large company had failed to reserve?

A. Not when you have three or five times the amount of the South Carolina reserve deposited in securities.

Q. I mean this. Is it not as necessary for a policyholder in a small company to have its reserve within the control of the Commissioner for the protection of the policyholder as it is for the reserve of the largest company to have its reserve within the control of the Commissioner?

A. Certainly, but in respect to these two companies here, I have actually secured deposits from three to five times their reserve.

Q. But you have not the deposits as required by the circular letter of July 8, 1911?

A. No; I have not.

Q. Mr. Commissioner, taking up the return of the Mutual Benefit Life Insurance Company, under date of April 15, 1912, which is a record of your department and which I offer in evidence as Relator's Exhibit "H," I notice upon that return that there appears "Applications Approved—Loans not yet closed, April
87 1st, 1912," aggregating $469,600.00. Have you any report from that company since April 15, 1912, showing how many of those loans have since then been approved?

A. I have a letter from the President of the Mutual Benefit Life Insurance Company of date October 18, 1912, which shows mortgages loans on South Carolina real estate, $352,500.00; bonds of counties in South Carolina, $55,000.00; applications for loans approved, but loans not yet closed, $262,600.00, making a total of $690,100.00.

Q. Deducting, Mr. Commissioner, the loans approved but not yet closed, does that show that at this time the Mutual Benefit Life Insurance Company has 25 per cent of its reserve invested in this State? That is, you deduct the loans approved but not yet closed from the loans?

A. No, it does not.

Q. Have you accepted from any other company other than the Mutual Benefit, as a part of the reserve, applications for approved loans not yet closed?

A. None of that character that I recall now.

Q. Have you anything in the records of your department which would indicate whether or not the applications of loans approved

but not yet closed which were reported to you on the 15th of April, 1912, are the same applications and loans not yet closed which were reported to you by that company on the 18th of October, 1912?

A. No, sir; I have not.

Q. Is it not a fact, from the examination of the company's letter and this statement which is a part of the record of your office, that the invested reserve on the 18th day of October, including the loans not yet closed is only about $6,000.00 in excess of what it was on the 15th day of April when this statement was filed in your office?

A. Yes, sir.

Q. Then, as a matter of fact, the Mutual Benefit, between the 15th of April, 1912, and the 19th of October, 1912, have
88 closed only a little over 50 per cent. of the pending applications. They have now, according to that statement, $228-000.00 not yet closed and taking out $470,000.00, we see that they have closed up in six months only about 50 per cent. of their loans?

A. I have no knowledge whatever that this increase is not embraced in that list of December 31st. They may be entirely new loans, but my general knowledge of the matter is this, which I have through constant conversations with the loan agents or principal loan agent of the Mutual Benefit, Mr. T. B. Stackhouse, of Columbia, S. C. That the company has held these loans open ready at any time to make them, waiting on the report on the title and they have held those loans from month to month, and frequently, after holding them open for three or four months the borrower, for some reason or other, possibly because he got tired waiting for the title to be completed, would refuse to make the loan after the title was completed. I can cite one instance. There was a $30,000.00 loan approved and agreed to by the company and they were ready for the party to take when the title was completed, then the party declined to take the loan or made some other arrangements.

Q. Whatever the facts may be, the fact still remains that at the present time, the Mutual Benefit has not the 25 per cent. reserve, excluding applications approved and loans not yet closed?

A. Yes, that is a fact. But what I mean to say is that it is no fault of the company, that the company has earnestly and honestly striven to make the loans and has stood ready to make loans not only on that paper but very much larger than that paper. It has merely been due to the tardiness of the lawyers or the defects in title that it has not made loans very much in excess of the 25 per cent.

Q. Isn't it a fact that, whatever may be the reason, the Mutual Benefit Life Insurance Company has today, so far as your
89 department is concerned, less than 25 per cent. of its reserve invested in South Carolina securities?

A. In securities actually passed.

Q. And that there is about $230,000.00 of this character of approved loans not yet closed?

A. Well, pending, yes.

Q. Have you in your department, any other life insurance com-

pany to whom a similar privilege has been extended by this department?

A. No, sir. I am quite sure of that, with the exception of the North State and the Florida Life.

Q. I am speaking in regard to loans approved but not yet closed?

A. No, sir.

Q. Assuming for the sake of argument, it is almost impossible, that misfortune should overtake the Mutual Benefit Life Insurance Company, would these approved applications for loans approved but not yet closed be assets against which the policyholders of the company in South Carolina could enforce their claims?

A. Certainly not, but your question misconceives the idea. It is not a question of safety or added safety, but to have within the State of South Carolina actual things that can be levied upon in case of a suit.

Q. Could you levy upon approved loans?

A. I could not.

Q. Then it is intangible and is not security?

A. Yes, sir.

Mr. Mordecai offers in evidence Statement of the Mutual Benefit Life Insurance Company of Newark, New Jersey, dated 15 April, 1912.

Statement received in evidence as Relator's Exhibit "H" 1.

Q. Is any reserve required by your department to be carried by accident companies?

A. Yes, sir.

Q. What reserve do you require?

A. What is called unearned premiums.

Q. Is there any reserve required by your department to be carried by casualty companies?

A. Yes, sir.

Q. Is there any reserve to be carried by surety companies?

A. Yes, sir.

90 Q. Have you made any requirement for the fiscal year since April 1st, 1912, as to any of that character of companies carrying a deposit of reserve?

A. I have not.

Q. Is there any reserve required by your department for fire insurance companies?

A. Yes, sir.

Q. Have you made any requirements as to deposits for fire companies?

A. No. Generally, there are specific cases in both of these kinds of companies with which I deal individually. As a general thing I do not make any requirements. There are some cases of both casualty and fire companies and all of these other companies which I require deposits of security and others I accept without. You must understand that while the term reserve is applied to fire, casualty, and other companies, it is not the same kind of reserve as life insurance companies. With all other companies, it is merely a temporary passing matter.

Q. In passing, if one of those companies were to fail, there would be injury?

A. Not necessarily.

Q. It appears from your circular of July 8, 1911, that you made certain requirements of all life insurance companies doing business in this State. I understand you to say that you did not make a similar requirement of any other class of company?

A. I did not.

Q. Don't a great many accident companies carry policies, issue policies upon which each year, if the premium is paid thereon, an increased amount of insurance is given to the assured?

A. Yes, sir. But no accident company can grant a natural death indemnity.

Q. Now in case of an accident company, take for instance the Travelers, whom, I presume, does the largest business in this State, in the event of the failure of that company, the failure to have either a bond or security deposited would inflict, in the event of failure of the company, a loss upon the policyholder?

A. Not likely, sir.

91 Q. Why not?

A. Because in either case the probabilities are that the bond would be responsive to the unearned premium on the policy issued by The Travelers, or the unpaid balance for commissions or anything of that kind.

Q. Assuming that the surety company was insolvent, wouldn't the bond be as responsive to a loss on a life policy as if the security were actually deposited?

A. The differences between the two are so great that they would bear no relation whatever. I may illustrate in this way. The life companies in 1911 took out of South Carolina over and above all disbursements for loans, taxes, commissions to agents, license fees and every other expenditure within the State of South Carolina the sum of more than $2,100,000.00, and five companies for the same year took out about $300,000.00, and the accident and health about $40,000.00. That gives you an idea of the difference in liability.

Q. But the recourse to the policy in the bond is the same in each case, but in less degree?

A. Very much less.

Q. It is simply a question of degree, is it not?

A. Yes, that is so. When an accident or health company goes out of the State, its liability in the State practically goes out with it, and they will certainly terminate within a year or two after it goes out; but when a life insurance company goes out of the State its liabilities may continue for 50 or 75 years thereafter.

Q. It is simply in proportion, isn't it?

A. No, not at all in proportion.

Q. Suppose an accident company were to go out of buisness in this State and at the time it withdrew it had a suit pending against it on a $50,000.00 policy. I happen to have such a policy in an accident company. Would I be protected as such policyholder if the company went out of the State any less or any more than if I held insurance in a life company?

92 A. Well, as I have already said, the purpose of making deposits is not so much protection that it gives the policyholder.

Q. It is all degree only?

A. Yes, all degree.

Q. What is it for if not to protect the policyholder?

A. It is to have within the State an actual security on which a levy can be made so that in case of having a suit to be brought, the policyholders of the State will not have to be troubled to go beyond the borders of the State.

Q. But it is as true for one case as for the other?

A. Yes, but in all the other companies the life time limit is inconsiderable, it is so small that it would be neglible.

Q. And the protection of the holders of accident policies, for the reasons you have just stated, is just as important as for life policies?

A. We must get away from the importance of protection.

Q. Is there any greater or less necessity for the life policyholder to have some security to levy on than there is for health or casualty?

A. Yes, in degree?

Q. Simply degree. Necessary, but simply degree?

A. Yes, sir. And while we are on the subject of surety companies I might add that in every case when there is no probability of a necessity to levy on securities, I required of that company, fire, accident or casualty, to deposit securities and I did not accept a bond.

Q. But you have in general securities from that company for the current year?

A. No, I deal with each case.

Q. As it comes up?

A. Yes.

Q. Where there is doubt in your mind?

A. Yes. In some cases I exact that they give a bond and do not accept securities.

Q. In the return in which you have made in this case you have referred to the reliability and responsibility of the Gulf and Atlantic Insurance Company in this State. I want to ask if

93 you will go over the list of this company for which you have accepted surety bonds and tell me from which of them you have accepted Gulf and Atlantic for this year. Is it not a fact that in a large number of instances in all classes of companies, you have accepted for the current year, bonds of the Gulf and Atlantic?

A. Yes, sir. I have got the exact thing you want. I accepted the Gulf and Atlantic on 13 life company bonds.

Q. How many bonds of fire and casualty and surety and other companies did you accept?

A. I accepted it on 33 fire and four bonds of miscellaneous companies. We class all the other companies as miscellaneous.

Q. You licensed that company to do business in this State?

A. Yes, sir.

Q. It is in good standing so far as your department is concerned?

A. Yes. You understand I accepted only such companies as I was absolutely sure were going to remain in the State. For instance,

I would accept no life companies unless I was satisfied that they were going to remain in this State under all conditions.

Q. You mean to say that you accepted these companies simply because you were satisfied of the solvency of the principal?

A. I do to a very large extent.

Q. Where there is a doubt about the company you refuse to take its bonds and yet you license it to do business in this State?

A. It is sufficient to me for such bonds as I accept from it. As long as this company is in an absolutely solvent condition I have no right to refuse to license it.

Q. Have you as Commissioner, felt bound to license the Gulf and Atlantic for the current year?

A. Yes, sir.

Q. Have you ever, as Commissioner, felt bound to accept it wherever offered?

A. No, sir.

Q. What cases have you refused?

A. When I am not satisfied with the principal.

Q. In what cases did you refuse?

A. I cannot tell you. I make no record of such refusals,
94 but I know I have declined to accept it in a number of instances.

Q. I want to know what its position in this department is?

A. From time to time there have been a number of companies that we have refused to take it on, extending back for several years.

Q. During the current year?

A. I refused to accept on Phoenix Mutual.

Q. But not on account of the company, but on account of the question of reserve?

A. I refused that bond because I did not think the Phoenix Mutual Life Insurance Company would stay in South Carolina.

Q. Did you state that when you returned that bond as one of your reasons?

A. I don't recall.

Q. Don't you know that you did not?

A. I do not.

Q. You later required mortgages to be put up?

A. Yes.

Q. Therefore, the ground of refusal was not insolvency?

A. I think the Gulf and Atlantic is perfectly solvent. My recollection is that I said that the Phoenix Mutual having no investment in South Carolina was one of my reasons for not accepting the bonds offered.

Q. I will show you your letter, that will state the grounds?

A. I don't have to state in my letters all the grounds. I just decline to accept in many instances.

Q. Then you say that the only reason why you refused to accept the bond of the Phoenix Mutual was because it was going to withdraw from the State?

A. I thought so. I thought the acts of the Phoenix Mutual showed me that it was going to withdraw from the State. I was not going to accept any surety bond from it. I certainly would not accept it.

As a matter of fact, the Gulf and Atlantic was a small company whose assets were comparatively small. As a practical question in my mind, I was unwilling to make the Gulf and Atlantic
95 responsible for this $20,000.00, in case the Phoenix Mutual withdrew from South Carolina.

Q. You did accept it for the Mutual Benefit?

A. Yes, but the Mutual was making efforts to invest in South Carolina securities and had no idea of going out of the State.

Q. You did not state that to the Phoenix Mutual?

A. No.

Q. Then I ask when you wrote that letter of March 16, 1912, to the Gulf and Atlantic Insurance Co., "I am returning herewith the bond of the Phoenix Mutual Life Insurance Company of Hartford. I am unable to accept a bond from this company unless they will furnish me with an affidavit showing that at least one-fourth of its reserve on South Carolina policies has been invested in the securities named in the Act of 1910", you did not go and state that the offer would be satisfactory if the Phoenix Mutual was not going to withdraw from the State?

A. I did not think it was necessary to state it.

Q. You did not state it?

A. No, I did not state it. Go back to your question. You asked me to name companies that from time to time I have declined to accept on the bonds of the various companies. There are several that I declined and gave no reasons. I simply declined to accept.

Q. Do you think you could give us a list of those companies?

A. I could not.

Q. I will ask you to get a sworn return of the Gulf and Atlantic upon which you issued license for this year?

A. They made their annual statement.

Q. And that is the only data upon which you issued their license?

A. Here it is.

Q. I understand the Commissioner to say that he issued a license to that company?

A. Yes, sir.

Q. And it is still in business?

A. Yes, sir.

Mr. Mordecai offers in evidence Fourth Annual Report of the Insurance Department of South Carolina, page 43, the State-
96 ment of The Gulf and Atlantic Insurance Company, dated 13 December, 1911.

Received in evidence.

Cross-examination.

By Mr. De Bruhl:

Q. Were there any companies from which you had accepted securities other than South Carolina. You have mentioned three companies, Florida, North Carolina and California?

A. There were four companies, North State of Kinston, North Carolina; Florida Life of Jacksonville, Fla.; Pacific Mutual of Los Angeles, California, and Union Central of Cincinnati, Ohio.

Q. You say they did have those securities here?

A. The Union Central, the Philadelphia Life, the Florida Life and the North State had securities here and had them for three years. The Pacific Mutual has heretofore been depositing a bond and I would not accept a bond this year, but temporarily accepted it. There is another company. We accepted a certificate of deposit of the Hartford Life which has since been replaced.

While that letter of mine was in explicit terms, I tried to be reasonable in every case, when I could. Those companies, for instance, the Pacific Mutual and the Hartford Life, both of which had been giving bonds heretofore, came to me and said we are certainly going to make investments in this State and as evidence of good faith, we have not done it yet, but we want you to accept temporarily other securities from us. I accepted from the Pacific Mutual, California Electric Light bonds, and from the Hartford Life $20,000.00 of certificates of deposit in the First National Bank of Hartford. They have made investments in this State and replaced that by South Carolina bonds and mortgages. As I stated before the Pacific Mutual has replaced and the Union Central has replaced and
97 the Philadelphia Life also, and each has deposited with me South Carolina securities, since the first of April, 1912. There are two companies, the Florida Life and the North State; I have written them frequently, but I must confess that recently I had forgotten practically all about them as applying to them this letter here, because they are so small and are doing such a small business. I had securities from them in North Carolina and Florida, and I had been doing all I could to make them make South Carolina investments, but I could understand the difficulties they labored under in making them. They promised time and time again and they have not done it. As a matter of fact, I had temporarily forgotten all about their failing to comply with this letter. That is the truth with regard to them. Of course, I sent them the letter of July 8th, 1911, have tried to have them replace the securities they had on deposit with South Carolina securities, and since then have written them repeatedly on the subject, but recently had forgotten that they had not complied fully with the terms of my letter of the 8th July, 1911.

Q. Those companies you mentioned there whom you accepted on securities other than South Carolina investments, you did that because they requested you to do so temporarily and promised to replace them?

A. Yes, and then because of the further fact that they stated, and as I believe, they intended to make South Carolina investments.

Q. All but two of them, so far, have carried it out?

A. Yes, sir.

Q. And did the plaintiff, the Phoenix Mutual Life Insurance Company, ever offer to give you any securities at all?

A. Absolutely nothing. I have the letters here which I want to put in evidence.

Q. Did they give you any opportunity to allow them to offer any securities at all? They offered you nothing?

A. If they did, I do not recall it. My recollection is that
98 their attitude was simply one of peremptory demand to accept bond.

Mr. MORDECAI: I object. If he had personal conversation, it is competent and I want him to state the time, person and place.

A. I had personal conversation with Mr. Sherfesee.

Mr. MORDECAI: I object to any declaration of the general agent of the company, because it is incompetent and not binding on the company. He is not a general officer.

WITNESS: He had charge of securing the license. He made a tender of the money and the bond and acted as the representative of the company in attempting to secure the license personally in this office with the money in his hands.

Q. Did they insist upon giving a bond?

A. Absolutely. My recollection is that there was no hesitation nor equivocation about it.

Q. They offered no security?

A. Absolutely none.

Q. Mr. Mordecai asked if you made the same requirements of accident and fire as you did of life companies. I know very little of such insurance matters and I want to ask if accident, fire and casualty and such companies would come in the same class with life?

A. Absolutely no. They are not in the same class whatever.

Q. Does the law under which you are acting make the same requirements of those companies?

Mr. MORDECAI: I object to any opinion of the witness. The law speaks for itself.

A. The law requires life companies to give $20,000 and other companies $10,000.00.

Q. What about your authority to take bonds?

Mr. MORDECAI: I renew my objection.

A. Exactly the same. It is all left to my discretion as Commissioner.

Q. All in the same class?

A. Yes, sir.

Q. Go ahead and state what you wanted to state?

A. I want to offer in evidence a copy of our letter which
99 I wrote to Mr. Jno. W. Holcombe, President of the Phoenix Mutual Life Insurance Company of Hartford, Connecticut, on February 15, 1912.

Letter received in evidence without objection and marked Defendant's Exhibit "A."

I also offer in evidence the reply to the above letter, of date 19 February, 1912, and signed John M. Holcombe, President.

Received in evidence and marked Defendant's Exhibit "B."

Also a copy of my letter of 23 February, 1912, to Jno. M. Hol-

combe, President of the Phoenix Mutual Life Insurance Company, and his reply, of date 26 February, 1912.

Letters received in evidence and marked Defendant's Exhibits "C" and "D" respectively.

Also a copy of my letter of January 29, 1912, and his reply, dated 2 February, 1912.

Received in evidence without objection, and marked Defendant's Exhibits "E" and "F", respectively.

Also letter of August 22, 1912, to me, signed H. E. Johnson, Assistant Secretary.

Received in evidence as Exhibit "G" of the defendant.

Mr. McMaster: I also offer in evidence a statement with reference to the State deposits, Schedule to be found on page 10 of the annual report for the year ending December 31, 1911.

Mr. Mordecai: The deposits with reference to Canada, Virginia and Connecticut.

Mr. McMaster: I also offer in evidence page 18 of Schedule "E" of the same annual report above mentioned, showing the bank balances carried in the various companies by the Phoenix Mutual Life Insurance Company.

Mr. Mordecai: It is understood that the annual report of
100 the Phoenix Mutual Life goes in as a whole and the witness refers to its particular points.

Mr. De Bruhl: It goes in as a whole.

Redirect examination.

By Mr. Mordecai:

Q. Although life insurance companies are not in the same class with fire, surety and casualty, accident, plate glass and boiler inspection companies, yet the same principal of reserve would apply to all, only in a different way?

A. Each has its reserve, but it is not only applied in a different way, but the difference between the companies are simply these. As life insurance companies are now conducted, I mean level premium life insurance, such companies as these are practically investment companies with insurance as a feature, the other classes of companies are insurance companies, pure and simple.

Q. But they all have to have reserve?

A. Yes, sir.

Q. The foundation of all insurance companies is reserve?

A. Yes, sir.

Q. And there is a certain amount of loading?

A. Yes, sir; but life insurance is a scientific reserve and with the others it is speculative.

Q. You get a reserve by loading your premiums?

A. The loading is a part of the premiums.

Q. And the reserve comes from that—it is one of the incidents?

A. The loading is in excess of the net premiums.

By Mr. DE BRUHL:

Q. The fact that it is a small company makes no difference. It is the same as this in any other company?
A. Yes, sir.

Mr. McMaster offers in evidence letter dated 25 March, 1912, to himself, signed Louis Sherfesee, General Manager.

101 Received in evidence and marked Defendant's Exhibit "H."

Reference thereupon adjourned and hearing closed.

A. D. McFADDIN,
Special Master.

9 November, 1912.

The following exhibits were offered in evidence in connection with the foregoing testimony taken in the office of the Insurance Commissioner for South Carolina, to wit:

DEFENDANT'S EXHIBIT "A."

Filed December 2, 1912.

COLUMBIA, S. C., February 15, 1912.

Mr. Jno. M. Holcombe, President Phoenix Mutual Life Insurance Co., Hartford, Conn.

DEAR SIR: Your Mr. Sherfesee, before the Senate Committee on Banking and Insurance, read extracts from a letter to him from which I understood that you had then under consideration the investing in certain South Carolina municipal securities. My recollection is that Mr. Sherfesee mentioned several such items, which were under consideration by you.

His statement, in connection with the statements of other representatives present, I believe, impressed the committee favorably in respect to the purpose of the companies doing business in South Carolina, to invest in South Carolina securities.

As you had only written me shortly before somewhat to the effect that you could not now consider making investments in South Carolina securities, I am taking the liberty of expressing to you the gratification given me by Mr. Sherfesee, and to ask for some other details in regard thereto.

Very truly,
(Signed) ——— ———,
Insurance Commissioner.

102 DEFENDANT'S EXHIBIT "B."

Filed December 2, 1912.

HARTFORD, CONN., February 19, 1912.

Hon. F. H. McMaster, Insurance Commissioner, South Carolina.

DEAR SIR: I am in receipt of yours of the 15th and beg to reply that some little time ago we had an offering of a small block of bonds of the City of Rock Hill, South Carolina. In view of the statement of resources and indebtedness, it seemed to us that these obligations were well secured, and as the rate of interest was fair, we felt that they offered a good investment for trust funds, although one of our committee expressed the opinion that it is generally desirable to purchase the bonds of a larger town than this one.

Our regular offerings of investments at this time are unusually large, and we are obliged to defer some very satisfactory ones for lack of funds, so that while we are always prepared to consider satisfactory securities, we are not likely to be in the market for any considerable amount for some time to come.

Very truly yours,

(Signed) JOHN M. HOLCOMBE, *President.*

DEFENDANT'S EXHIBIT "C."

Filed December 2, 1912.

COLUMBIA, S. C., February 23, 1912.

Mr. Jno. M. Holcombe, President Phoenix Mutual Life Insurance Co., Hartford, Conn.

DEAR SIR: In view of what I understood the statement of your general agent before the Senate Banking and Insurance Committee to mean, I can but express my keen regret to learn from you that in effect the extent of your action, looking to the making of investments in South Carolina, was to consider "some little time ago * * * an offering of a small block of bonds of the City of Rock Hill, S. C."

103 I understood Mr. Sherfesee to say, and I believe the committee understood Mr. Sherfesee to say, that you had (if not actually purchased) determined to purchase several blocks of South Carolina securities, and that, having commenced, you probably would continue regularly to purchase these securities.

I understand your letter of February 19th to be entirely contrary in effect.

Very truly,

Insurance Commissioner.

DEFENDANT'S EXHIBIT "D."

Filed December 2, 1912.

HARTFORD, CONN., February 26, 1912.

Hon. F. H. McMaster, Insurance Commissioner, Columbia, S. C.

DEAR SIR: I am in receipt of yours of February 23, and upon referring to my communication to you I find that I was not as explicit as I intended to be. We have bought a block of bonds of the City of Rock Hill, S. C. I meant that you should understand this from my letter, although I find I did not directly say so.

So far as the future is concerned, I have said that we were prepared to consider other securities of a similar nature, although at this time of the year there is an unusual outgo in the way of policy obligations and taxes, as well as the ordinary demand for investments. I do not think that Mr. Sherfesee knowingly misrepresented us in this matter, and I have intended to be very frank with both of you.

Very truly yours,

(Signed) JOHN M. HOLCOMBE, *President.*

104 DEFENDANT'S EXHIBIT "E."

Filed December 2, 1912.

JANUARY 29, 1912.

Mr. Jno. M. Holcombe, President Phoenix Mutual Life Insurance Co., Hartford, Conn.

MY DEAR SIR: I thank you very much for your letter of January 26th.

As I understand from this letter, however, the Phoenix Mutual is not prepared to make loans on real estate in South Carolina.

If I am mistaken in this, will you kindly advise me specifically in what towns or cities, or in what counties on farms, the Phoenix Mutual will make loans.

Thanking you in advance for this information, I am,

Very truly,

____ ____,

Insurance Commissioner.

DEFENDANT'S EXHIBIT "F."

Filed December 2, 1912.

HARTFORD, CONN., February 2, 1912.

Hon. F. H. McMaster, Insurance Commissioner, Columbia, S. C.

DEAR SIR: I beg to acknowledge the receipt of yours of January 29, and to reply that this company is not prepared at this time,

either by a thorough knowledge of the field or by having selected reliable correspondence, to make loans on real estate in South Carolina. We are just now receiving from men who have served the company long and satisfactorily rather more applications than we can fill, and under these circumstances, to establish new connections would in our judgment jeopardize our interests by impairing the value of an organization which it has taken many years to establish.

We are almost daily in receipt of urgent requests to make loans in nearly every State in the Union, but we believe that the
105 best interests of our policyholders will be served by pursuing that policy of investment which has for many years produced the most satisfactory results.

We are prepared to meet obligations of our policies whenever they occur, and to *trust* our members with every degree of promptness and liberality. Within the past two years we have paid to residents of South Carolina on account of death claims about $60,000.00 and have made loans on our policies to citizens of that State to the amount of about $25,000.00. These contracts have been met promptly and liberally as I am sure our members will cheerfully acknowledge, but it is quite evident from a casual inspection of the accounts that we have received from our policyholders in your State within the past two years little if any more than enough to meet the claims under their policies.

We are not ready to admit that it is our duty to loan money to any particular persons other than our policyholders, or that by doing business in any section we are under any moral obligation to make any particular class of investments. We have mortgage loans in the State of Connecticut amounting to $126,000.00, but we have no connections for making these loans in any other New England State, New York, New Jersey, Pennsylvania, Ohio, North Carolina, South Carolina, Georgia, Alabama, Kentucky, Tennessee, or in many other States where a great proportion of our members reside.

If securities which approve themselves to us should be presented from any State, we should consider them with care, but we are not prepared to make any agreements that loans will be made in any particular cities or States.

It seems to me a fair question to raise whether it is the duty of a mutual life insurance company like this one, doing an active business in thirty-three States and having investments in nine or ten, to disrupt its investment organization and establish new
106 connections in each one of the States where it shall do business, without regard to experience, rate of interest to be secured, or the cost which would be entailed in making and supervising investments in so many different localities.

Very truly yours,

(Signed) JOHN M. HOLCOMBE, *President.*

DEFENDANT'S EXHIBIT "G."

Filed December 2, 1912.

HARTFORD, CONN., Aug. 22, 1912.

Hon. F. H. McMaster, Insurance Com'r, Columbia, S. C.

DEAR SIR: Answering yours of the ninth instant, we estimate the approximate reserve in South Carolina, on policies in force as of June 30, 1912, as $375,000.00.

This company owns 5 per cent. sewer bonds issued by the City of Rock Hill, S. C., to the amount of $10,350.00 (cost value).

Yours very truly,

(Signed) H. E. JOHNSON,
Ass't Secretary.

DEFENDANT'S EXHIBIT "G." 1.

Filed December 2, 1912.

COLUMBIA, S .C., January 13, 1912.

Mr. Louis Sherfesee, Gen. Agt., Phoenix Mutual Life Insurance Co., Charleston, S. C.

DEAR SIR: In the crush of other matters and the rush of the moment, I am afraid that I answered you a little precipitately yesterday, when I told you that I would enforce the terms of my letter of July 8th to the effect that I would require all companies,
107 which had not invested at least one-fourth of their South Carolina reserves in South Carolina securities, to deposit securities rather than a surety bond.

The letter of July 8th was written before I had arrived at what I now believe to be the proper solution of the problem, namely: my present 3 per cent bill. At the time of writing the letter, I was distressed at the failure of the 2 per cent. law to accomplish its purpose and, believing that compulsory investment was not now practicable, upon an examination of the reports of other States, I found that investment in local securities was accomplished to some extent by the requirement to deposit local securities. Hence the letter.

But, since the agitation of the matter subsequent to the reading of my paper before the National Convention of Insurance Commissioners on August 22nd, and the determination of certain companies to invest in South Carolina securities, I believe the 3 per cent. proposed is sufficient for them, and I doubt whether there is any need to require deposit of securities of companies, except those which practically declare that they will not invest in South Carolina securities.

I think, too, that it will be best for me to introduce all of my bills at earliest opportunity. It has been the practice of the department to declare its purposes openly and as early as possible, and I feel that prompt action is best.

Very truly,

(Signed) F. H. McMASTER,
Insurance Commissioner.

DEFENDANT'S EXHIBIT "H."

Filed December 2, 1912.

COLUMBIA, S. C., March 25, 1912.

Mr. F. H. McMaster, Insurance Comm'r, City.

DEAR SIR: Your esteemed favor of this date has been received and under instructions from my company, I am returning
108 herewith bond enclosed in your favor and again tender *in* the same to you with the money already received by you and respectfully request on behalf of the company your prompt acceptance or rejection of said money and bond as full compliance by this company with the laws of South Carolina; the company declining to accede to your request to deposit securities as stated by you as they are advised that you have no legal right to make such demand.

I shall be very much obliged if you will either decline or accept the tender so now made by me on behalf of company. If you accept such tender then, of course, you will issue license. If you decline, I shall be in a position to report to my company your declination to accept such tender.

I call your attention to the fact that the time between now and the first of April, 1912, is short and that in event of your declining to accept such tender and license this company, it will be necessary for it to protect itself in such way as it may be advised.

I am here in the City of Columbia especially for the purpose of securing your final decision and will be very much obliged if you will give me your prompt response to this letter.

With very kind regards, I am,

Yours truly,

(Signed) LOUIS SHERFESEE,
General Manager.

DEFENDANT'S EXHIBIT "I."

Filed December 2, 1912.

The following level premium life insurance companies, doing ordinary business, are now licensed in South Carolina, and have the deposit opposite their names with the Insurance Department of South Carolina:

109

Aetna Life Insurance Co., Hartford	Surety Bond, Gulf & Atlantic Ins. Co.
American National	South Carolina Securities.
Columbian National	Surety Bond, Gulf & Atlantic Ins. Co.
Col'l Life Ins. & Cas., Savannah, Ga.	South Carolina Securities.
Equitable Life Assurance Society	South Carolina Securities.
Fidelity Mutual of Philadelphia	Surety Bond, Gulf & Atlantic Ins. Co.

Florida Life Insurance Co.....Florida Securities.
Germania Life.....Surety Bond, Gulf & Atlantic Ins. Co.
Greensboro Life.....South Carolina Securities.
Hartford Life of Hartford.....South Carolina Securities.
Home Life, New York City.....South Carolina Securities.
Jefferson Standard.....South Carolina Securities.
Life Ins. Co. of Virginia, Richmond..Surety Bond, Gulf & Atlantic Ins. Co.
Manhattan Life.....Surety Bond, Gulf & Atlantic Ins. Co.
Metropolitan Life.....Surety Bond, Gulf & Atlantic Ins. Co.
Mutual Life of New York City.....South Carolina Securities.
Mutual Benefit, Newark, N. J.....Surety Bond, Gulf & Atlantic Ins. Co.
New England Mutual.....Surety Bond, Gulf & Atlantic Ins. Co.
New York Life, New York.....South Carolina Securities.
North State Life, Kinston, N. C.....North Carolina Securities.
Pacific Mutual Life.....South Carolina Securities.
Penn Mutual Life, Philadelphia.....Surety Bond, Gulf & Atlantic Ins. Co.
Philadelphia Life, Philadelphia.....South Carolina Securities.
Prudential Insurance Co.....South Carolina Securities.
Reliance Life.....Surety Bond, U. S. F. & G. Co., Baltimore, Md.
Security Life & Annuity.....South Carolina Securities.
Security Mutual.....Surety Bond, Gulf & Atlantic Ins. Co.
Southeastern, Greenville, S. C.....South Carolina Securities.
Southern Life & Trust.....South Carolina Securities.
Southern States Life.....South Carolina Securities.
South Atlantic Life.....South Carolina Securities.
State Life of Indiana, Indianapolis....Surety Bond, U. S. F. & G. Co., Baltimore, Md.
State Mutual Life of Worcester, Mass..Surety Bond, Gulf & Atlantic Ins. Co.
Travelers Ins. Co., Hartford.....Surety Bond, Gulf & Atlantic Ins. Co.
Union Central Life of Cincinnati.....South Carolina Securities.
Volunteer State Life, Chattanooga....South Carolina Securities.

(Copy.)

Return of the Mutual Benefit Life Insurance Company.

This is to certify that the reserve on all policies outstanding and in force on the 31st day of December, 1911, issued by the Mutual Benefit Life Insurance Company, of Newark, New Jersey, on the lives of citizens of the State of South Carolina was estimated at **$2,537,000.00.**

And this is to certify further that the securities named on
110 attached list were purchased on the dates given and have since been the property of said company and are now, and have been ever since, in its possession.

J. WM. JOHNSON, *Secretary.*

Sworn to before me this fifteenth day of April, 1912.

GEO. HALSEY STURGES,
Notary Public for New Jersey.

Date of loan or purchase.	Name and address of mortgagor or numbers and description of bonds.	Amount loaned or invested.
Apr. 30, 1909.	Lee Co., S. C., Courthouse 5%, Feb. 1, 1937, Nos. 2-24, inclusive and 28, 29, 30, 32, 33, 34, 35 (Bonds)....	$30,000.00
Mar. 21, 1912.	Dillon Co. Highway Import 5%, Jan. 1, 1942, Nos. 1-25, inclusive (Bonds)	25,000.00
	Mortgages.	
June 27, 1910.	Geo. Tindal, Clarendon Co.—Address, Silver	20,000.00
Jan. 20, 1911.	Lucien E. Brailsford, Clarendon Co.—Address, Summerton.....	17,500.00
Mar. 18, 1911.	Joshua P. Kirven, Darlington Co.—Address, Darlington.....	20,000.00
Mar. 22, 1911.	Harry L. Harlee, Darlington Co.—Address, Darlington.....	5,000.00
Apr. 22, 1911.	Wm. D. Coggeshall, Darlington Co.—Address, Darlington.....	30,000.00
July 3, 1911.	R. Hugh Belser, Clarendon Co.—Address, Summerton.....	7,500.00
Jan. 4, 1912.	Jas. B. Law, Darlington Co.—Address, Darlington	25,000.00
Jan. 16, 1912.	Main St. M. E. Church, Richland Co.—Address, Columbia.....	3,500.00
Feb. 9, 1912.	Erasmus E. Kirven, Darlington Co.—Address, Florence.....	6,000.00
Feb. 15, 1912.	Wm. K. Glenn, Anderson Co.—Address, Anderson.....	6,000.00
Feb. 28, 1912.	Maxfield H. Sexton, Anderson Co.—Address, Starr.....	4,000.00
Mar. 12, 1912.	James W. Childess, Anderson Co.—Address, Greenville.....	3,000.00
Mar. 30, 1912.	Henry J. Nettles, Darlington Co.—Address, Hartsville.....	8,000.00
Mar. 29, 1912.	Wm. E. Burriss, Anderson Co.—Address, Denver.....	4,500.00
	Total April 1, 1912.....	$215,000.00

Applications Approved—Loans Not Yet Closed—April 1, 1912.

Applicant.	Location.	Address.	Amount.
Wm. A. Rogers	Marlboro Co.	Blenheim	$30,000.00
Richard E. Belser et al	Sumter Co.	Sumter	7,500.00
Thos. H. Gentry	Clarendon Co.	Summerton	10,000.00
R. L Bennett	Marlboro Co.	Clio	10,000.00
111			
Jas. N. Moore	Darlington Co.	Hartsville	20,000.00
Andrew T. Baird et al	Darlington Co.	Dovesville	10,000.00
V. L. Emanuel	Marlboro Co.	Bennettsville	7,500.00
Thos. W. McLure	Anderson Co.	Anderson	4,000.00
Wm. J. McLure	Anderson Co.	Anderson	8,000.00
John S. Thompson	Dillon Co.	Dillon	25,000.00
J. S. Fowler	Anderson Co.	Anderson	45,000.00
John F. Everett	Marlboro Co.	Everett	12,500.00
Chas. P. Hodges	Dillon Co.	Brownsville	25,000.00
Marion C. Mahaffy	Anderson Co.	Williamston	2,600.00
Wm. A. Simpson	Greenville Co.	Golden Grove	20,000.00
Andrew W. Pickens	Anderson Co.	Easley	6,000.00
Walter L. Pruitt et al	Anderson Co.	Starr	3,500.00
Jas. O. Sanders	Anderson Co	Anderson	9,000.00
Wm. P. Fowler	Spartanburg Co.	Woodruff	5,000.00
Jas. R. Gibson	Spartanburg Co.	Inman	4,000.00
Asa Hall, Jr.	Anderson Co.	Iva	3,000.00
Arthur J. Jones	Sumter Co.	Tindal	16,000.00
Madison P. Mason	Spartanburg Co.	Woodruff	4,000.00
John M. Nichols	Spartanburg Co	Spartanburg	3,000.00
Sallie M. Edens	Marlboro Co.	Bennettsville	15,000.00
Mary M. Donald	Darlington Co	Mt. Clare	10,000.00
Sue S. McLeod	Marlboro Co.	Blenheim	15,000.00
J. S. McKenzie	Florence Co.	Bannockburn	15,000.00
Bessie W McIver	Darlington Co	Society Hill	10,000.00
Robert M. Cooper	Sumter Co.	Wisacky	15,000.00
Ernest D. Sumner	Darlington Co.	Hartsville	4,000.00
David C. Shaw	Sumter Co.	Sumter	8,000.00
B. R. Roberts	Dillon Co.	Fork	7,000.00
Pee Dee Realty Co.	Darlington Co.	Darlington	6,000.00
Daniel W. Brown	Sumter Co.	Sumter	6,500.00
W. M. Graham	Sumter Co.	Sumter	15,000.00
A. L Avitt	Darlington Co.	Palmetto	5,000.00
J. N. Moore	Lee Co.	Hartsville	8,000.00
Jas. L. Rhodes	Greenville Co.	Piedmont	13,000.00
J. W. Moore et al	Dillon Co.	Fork	6,000.00
Julian E. Saunders	Sumter Co.	Hagood	4,000.00
Emma A. Saunders	Sumter Co	Hagood	8,500.00
Frank N. Hudgens et al	Anderson Co.	Pelzer	8,000.00
Total			$469,600.00
Grand total			$684,600.00

112 *Opinion of Supreme Court of South Carolina.*

Filed March 15, 1913.

THE STATE OF SOUTH CAROLINA:

In the Supreme Court.

THE STATE OF SOUTH CAROLINA ex Relatione PHOENIX MUTUAL Life Insurance Company, a Body Corporate under the Laws of the State of Connecticut, Having its Principal Place of Business in the City of Hartford, in the State of Connecticut, and Duly Licensed to do Business in the State of South Carolina, Petitioner, against

FITZ H. MCMASTER, as Insurance Commissioner of the State of South Carolina, Respondent.

Opinion by Eugene B. Gary, C. J.

This is an application to the Court for a writ of mandamus, requiring the respondent to issue to the petitioner, a license to do business in this State, as a life insurance company; and, is in the nature of an appeal, under and by virtue of the Act of 1912, (page 768), entitled: "An Act to provide a method of appeal, from the orders, rulings, or decisions of the Insurance Commissioner."

The questions under consideration, involve the construction of the Act of 1910 (page 772), which contains this provision; "Before licensing any insurance company to do business in this State, the Insurance Commissioner shall require each such Company, to deposit with him an approved bond or approved securities in the discretion of the Commissioner, as follows: Each legal reserve life insurance company, twenty thousand dollars; each fire, accident or casualty, or surety insurance company, ten thousand dollars."

The petitioner tendered the fees for a license, and its bond with the Gulf & Atlantic Insurance Company as surety, but the respondent refused to issue a license, unless the petitioner would furnish him with an affidavit, showing that, at least, one fourth of its reserve on South Carolina policies, had been invested in the
113 securities named in the Act of 1910. The following securities are mentioned in said Act: bonds of this State, or of any county, city, or town of this State; or first mortgage bonds on real estate in this State; or first mortgage bonds of solvent domestic corporations, whose property is situate entirely within this State; or any property situate in this State and taxable therein"

The petitioner contends, that the refusal to issue the license, was an abuse of discretion; also, that it was in violation of Art. 1, section 5 of the Constitution of this State, and the Fourteenth Amendment of the Constitution of the United States, in that the petitioner was denied the equal protection of the laws, and was deprived of his property without due process of law.

If the Insurance Commissioner had merely ruled, that he would not issue a license to the petitioner, unless it deposited with him

approved securities, it would not have the right to compel him to accept an approved bond, as the statute, unquestionably, conferred upon him the power to exercise his discretion in this respect.

The petitioner, however, contends that it was beyond the powers conferred upon the respondent by the statute, to refuse to issue the license, unless it showed that it had invested, at least, one fourth of its reserve on South Carolina policies; that the effect of said ruling, was to impose another condition, in addition to those mentioned in the statute, and therefore, that it was a nullity.

The petitioner did not offer to deposit with the Insurance Commissioner, any securities whatever, nor to comply with the said ruling in any manner; but, in effect, attempted to exercise its own discretion, by insisting that the Insurance Commissioner
114 accept the bond which was tendered. Under these circumstances, the petitioner is not in a position to raise this question, as it has failed to show, that said ruling was prejudicial to its rights.

This is conclusive of the case, but as the question whether the petitioner was denied the equal protection of the law, fairly arises upon the record, we will not decline to consider it.

The Act of 1910 (page 772) provides: "Before granting a certificate of authority to do business in this State to any company, the Insurance Commissioner shall be satisfied by proper evidence, that such applicant for license, is duly qualified to do business, under the laws of this State; that it is safe and solvent; that its dealings are fair and equitable; and that it conducts its business in a manner not contrary to the public interests."

It will thus be seen that the statute contemplates, that the Insurance Commissioner must be satisfied by proper evidence, in each and every case, that the applicant possesses the necessary qualifications for doing business in this State, and that in each case, he must determine whether the public interest would be best subserved, by requiring the particular applicant, to deposit an approved bond, or approved securities. By this construction alone, can the discretionary powers conferred upon the Commissioner, be exercised, and made effective. Therefore, the requirement that one applicant should deposit an approved bond, and another applicant, approved securities, is not a denial of the equal protection of the law.

From these conclusions it necessarily follows, that the petitioner was not deprived of his property, without due process of law.

It is the judgment of this Court, that the application for a writ of mandamus be refused, and the appeal dismissed.

We concur:

C. A. WOODS, *A. J.*
D. E. HYDRICK, *A. J.*
R. C. WATTS, *A. J.*
T. B. FRASER, *A. J.*

(Report.)

[SEAL.]

A true copy.

U. R. BROOKS, *Clerk.*

115 *Petition for Rehearing.*

Filed March 19, 1913.

THE STATE OF SOUTH CAROLINA:

In the Supreme Court.

THE STATE OF SOUTH CAROLINA ex Relatione PHOENIX MUTUAL LIFE INSURANCE COMPANY, Petitioner,

versus

FITZ H. MCMASTER, as Insurance Commissioner of the State of South Carolina, Respondent.

STATE OF SOUTH CAROLINA ex Relatione LOUIS SHERFESEE AND FRANK F. COVINGTON, Petitioners,

versus

FITZ H. MCMASTER, as Insurance Commissioner of the State of South Carolina, Respondent.

Petition for Rehearing.

To the Honorable, the Supreme Court of South Carolina:

The petition of Phoenix Mutual Life Insurance Company, Louis Sherfesee and Frank F. Covington, respectfully shows:

I. That on the fifteenth (15th) day of March, 1913, the decision of this Court in the above entitled causes, rendered by Honorable Eugene B. Gary, Chief Justice, and concurred in by the other Justices, was handed down and filed in the clerk's office, and that the judgment of the Court, then and there rendered, was that the application for a writ of mandamus be refused and the appeal dis-
116 missed.

II. That these petitioners respectfully represent that this honorable Court overlooked and failed to consider the following propositions of law based upon the admitted facts proved in this case, in that

(*a*) The uncontradicted testimony in this case shows that the respondent herein, Fitz H. McMaster, Insurance Commissioner, licensed the Mutual Benefit Life Insurance Company, of Newark, New Jersey, for the year commencing April 1, 1912, upon such Company depositing with the Commissioner a surety bond executed by itself and the Gulf and Atlantic Insurance Company, although said Mutual Benefit Life Insurance Company had not invested in the securities prescribed by the Commissioner, 25 per cent. of the reserve of such Company on the premiums received from policyholders of such Company in this State, and the Insurance Commissioner yet refused to accept the surety bond from the petitioner, the Phoenix Mutual Life Insurance Company, because it had not invested in South Carolina securities to the extent of 25 per cent. of its reserve; and the Court in its opinion and decision, failed to

consider this vital question as applicable to the principles of law involved in this case, that is to say.

(*b*) That it failed to consider the propositions of law presented by the petitioner, namely: that the Insurance Commissioner, the respondent herein, had the discretion of demanding to be deposited with it by all insurance companies of the same class, either an approved bond or approved securities, and that, inasmuch as all life insurance companies are in the same class, his demand, as made upon this petitioner, to wit: that it must either invest 25 per cent. of its reserve on South Carolina policies in the securities named in the Act of 1910, to cause it to have accepted by the Commissioner the bond of a surety company, or that it must deposit with the Commissioner the securities called for by the Act of 1910, to wit: South Carolina securities; and that, as will appear by the record
117 in this cause, on March 16, 1912, the respondent notified the petitioner that it would be unable to accept a bond from this company unless they furnished the respondent with an affidavit showing that at least one-fourth (¼) of its reserve on South Carolina policies has been invested in the securities named in the Act of 1910.

(*c*) So that the Court failed entirely to consider the propositions of law submitted by the petitioner, namely: that the law must operate on all alike and not subject the individual to an arbitrary exercise of the powers of government, and that there must be no discrimination in favor of one as against another of the same class, and that the rule of equality in respect to the subject, requiring only the same means and methods to be applied impartially to all constituents of each class, so that the law shall operate equally and uniformly upon all persons in similar circumstances, upon the undisputed evidence in this cause, the Court overlooked and failed to consider that the facts in this cause showed that there was a clear, unjust discrimination by the respondent against this petitioner in favor of other insurance companies doing a life insurance business in the same class.

(*d*) Your petitioner further shows that when this honorable Court held that the petitioner did not offer to deposit with the Insurance Commissioner any securities whatever, nor to comply with the said rule in any manner, your petitioner respectfully represents that this Court did not consider, as it should have considered, that under the peremptory demand of the respondent in this cause, it could not offer, and was not permitted to offer, anything except the securities named in the Act of 1910, which, as the petitioner has shown, had no application directly or indirectly to the procuring of a license to do business in the State of South Carolina.

(*e*) Your petitioner further represents that this honorable
118 Court erred in saying that this petitioner attempted to exercise its own discretion by insisting that the Insurance Commissioner should accept the bond which was tendered, when, as the undisputed evidence in the cause shows, the Commissioner arbitrarily refused to accept this bond unless 25 per cent. of the reserve was invested; whereas, in the case of the Mutual Benefit

Life Insurance Company, notwithstanding that it had not invested the 25 per cent, yet, nevertheless, he accepted the bond in that case.

(*f*) Your petitioner further shows that this honorable Court overlooked, in their reasoning and decision, the fact that the statute under which the respondent undertook to act, gave discretion only to the Commissioner to require a deposit either of an approved bond or approved securities, but that as against companies in the same class, he could not make one kind of demand against one and another kind of demand against the other.

(*g*) Your petitioner further shows that in the argument of the case before the Court, the respondent did not take the position, nor was it suggested, that the Act of 1910, at page 772, providing that before granting a certificate of authority to do business in this State to any company, the Insurance Commissioner shall be satisfied by proper evidence that such applicant for license is duly qualified to do business under the laws of this State; that it is safe and solvent; that its dealings are fair and equitable, and that it conducts its business in a manner not contrary to the public interest, and that this petitioner had no opportunity to reply to the position taken by the Court, and respectfully submits that the complete answer to the position is: that this section has no application whatever to the provision as to the giving of bond.

(*h*) That, therefore, the decision of the Court, that the
119 Insurance Commissioner must be satisfied by proper evidence in each and every case that the applicant possesses the necessary qualifications for doing business in this State, and that in each case he must determine whether the public interest would be best subserved by requiring a particular applicant to deposit approved bond or approved securities, your petitioner submits, is not justified by the facts and the law applicable thereto, and that your petitioner was given no opportunity at the hearing of this cause to submit any argument upon the point herein referred to.

III. And your petitioner further represents and respectfully calls the attention of the Court to the fact that when this case was argued before this honorable Court in January last, the counsel for the petitioners, when he arose to reply to the argument which had been presented by the respondent in person, was informed by the Court that the Court did not care to hear further from such counsel, unless the counsel desired to be heard, thus clearly intimating to the counsel for the petitioners that the Court, on the points involved, was in favor of the propositions advanced by him, and this petitioner was led to suppose and to believe that it had convinced the Court of the correctness of its position, and that it was for this reason only that the petitioner did not have its counsel continue the argument in reply, and, therefore, has innocently suffered by not exercising its privileges at the hearing, at the suggestion of the Court. And this petitioner submits that thereby it was prejudiced in its rights, and respectfuly submits that it is satisfied if it is given an opportunity for a reargument of this case, it can convince the Court of the correctness of the legal position advanced by it.

Wherefore, these petitioners respectfully pray that the
120 Court will order a rehearing of this cause at such time as the Court may be pleased to appoint.

And your peitioners will ever pray.

PHOENIX MUTUAL LIFE INSURANCE CO.,
(Signed) By T. MOULTRIE MORDECAI, *Attorney.*
(Signed) LOUIS SHERFESEE,
FRANK F. COVINGTON,
(Signed) By T. MOULTRIE MORDECAI, *Attorney.*
(Signed) MORDECAI, GADSDEN & RUTLEDGE,
Attorneys for Petitioners.

Charleston, S. C., March 15, 1913.

I, Arthur R. Young, not being of counsel, or concerned in the above entitled cause, do hereby certify that in my opinion there is merit in the ground stated in the above petition for rehearing.

(Signed) ARTHUR R. YOUNG,
Attorney at Law.

STATE OF SOUTH CAROLINA,
County of Charleston:

Personally appeared before me T. Moultrie Mordecai, who, being duly sworn, says that he is one of the counsel for the petitioners in the above entitled action, and that he is the counsel in South Carolina for the Phoenix Mutual Life Insurance Company; that the foregoing petition is true of his own knowledge; that the Phoenix Mutual Life Insurance Company is a foreign corporation and that none of its officers reside within the limits of this State, and
121 the facts stated in the foregoing petition are true of his own knowledge.

(Signed) T. MOULTRIE MORDECAI.

Sworn to and subscribed before me this 15th day of March, 1913.

(Signed) ARTHUR R. YOUNG, [L. S.]
Notary Public for South Carolina.

STATE OF SOUTH CAROLINA,
County of Charleston:

Louis Sherfesee, one of the petitioners herein, being duly sworn, says that the facts stated in the foregoing petition are true of his own knowledge.

(Signed) LOUIS SHERFESEE.

Sworn to and subscribed before me this 15th day of March, 1913.

(Signed) ARTHUR R. YOUNG, [L. S.]
Notary Public for South Carolina.

Petition for Rehearing.

Filed March 19, 1913.

THE STATE OF SOUTH CAROLINA:

In the Supreme Court.

THE STATE OF SOUTH CAROLINA ex Relatione PHOENIX MUTUAL LIFE INSURANCE COMPANY, Petitioner,
versus
FITZ H. MCMASTER, as Insurance Commissioner of the State of South Carolina, Respondent.

STATE OF SOUTH CAROLINA ex Relatione LOUIS SHERFESEE and FRANK F. COVINGTON, Petitioners,
versus
FITZ H. MCMASTER, as Insurance Commissioner of the State of South Carolina, Respondent.

122 To the Honorable, the Supreme Court of South Carolina:

Your petitioners respectfully represent that they are about to file a petition for a rehearing in the above stated matter, and that in order that said petition may be considered by the said Court, it is necessary that the Court should grant a stay until such time as the Supreme Court can hear and consider said petition.

Wherefore, the petitioners pray that further proceedings herein be stayed for such time as may be permitted by the rules of this Court.

And your petitioners will ever pray.

PHOENIX MUTUAL LIFE INSURANCE COMPANY,
(Sgd.) By T. MOULTRIE MORDECAI, *Attorney.*
(Sgd.) LOUIS SHERFESEE,
FRANK F. COVINGTON,
(Sgd.) By T. MOULTRIE MORDECAI, *Attorney.*
(Sgd.) MORDECAI & GADSDEN & RUTLEDGE,
Attorneys for Petitioners.

Order Granting Stay.

Filed March 19, 1913.

THE STATE OF SOUTH CAROLINA:

In the Supreme Court.

THE STATE OF SOUTH CAROLINA ex Relatione PHOENIX MUTUAL LIFE INSURANCE COMPANY, Petitioner,
versus
FITZ H. MCMASTER, as Insurance Commissioner of the State of South Carolina, Respondent.

STATE OF SOUTH CAROLINA ex Relatione LOUIS SHERFESEE and FRANK F. COVINGTON, Petitioners,
versus
FITZ H. MCMASTER, as Insurance Commissioner of the State of South Carolina, Respondent.

123 *Order.*

Upon hearing the foregoing petition for rehearing, and petition for stay,

It is ordered, That the same be filed with the Clerk of the Supreme Court, and that further proceedings hereunder be stayed until the further order of the Supreme Court, and that a copy of this order be served upon the respondent.

(Sgd.) EUGENE B. GARY,
Chief Justice, South Carolina.

Abbeville, South Carolina, March 17, 1913.

Brief on Petition for Rehearing.

Filed March 19, 1913.

THE STATE OF SOUTH CAROLINA:

In the Supreme Court.

THE STATE OF SOUTH CAROLINA ex Relatione PHOENIX MUTUAL LIFE INSURANCE COMPANY, Petitioner,
versus
FITZ H. MCMASTER, as Insurance Commissioner of the State of South Carolina, Respondent.

STATE OF SOUTH CAROLINA ex Relatione LOUIS SHERFESEE and FRANK F. COVINGTON, Petitioners,
versus
FITZ H. MCMASTER, as Insurance Commissioner of the State of South Carolina, Respondent.

Brief of Petitioner on Application for Rehearing.

Before discussing the questions involved in the petition for rehearing, it must be borne in mind that the right of a State to prescribe any conditions precedent to a foreign corporation doing business within its borders, is not involved in this discussion, but the question is whether when those conditions are prescribed and the State is proceeding to carry out through its proper officers the provisions of the law so enacted, it can discriminate between corporations of the same class, or must treat them all alike.

124

Article 1, Chapter 45, of the Code of Laws, 1912, which is now being examined, and especially Sections 2699 and 2701, which are respectively re-enactments of the Act of 1910; Section 2701 being Section 13 of that Act, and Section 2699 being Section 10 thereof, as re-enacted, are in point.

Section 2701 (Section 13) reads as follows:

"Before licensing any insurance company to do business in this State, the Insurance Commissioner shall require each such company to deposit with him an approved bond or approved securities, in the discretion of the Commissioner, as follows: Each legal reserve life insurance company, twenty thousand dollars."

Section 2699 (Section 10) reads as follows:

"Before granting a certificate of authority to do business in this State to any company, the Insurance Commissioner shall be satisfied by proper evidence that such applicant for license is duly qualified to do business under the laws of this State; that it is safe and solvent; that its dealings are fair and equitable and that it conducts its business in a manner not contrary to the public interests."

An examination of this Article will show that the Sections in question are applicable to all companies, foreign or domestic, seeking

to do business within the State, and it is submitted that in applying their provisions to all companies of the same class, each company is entitled to the same treatment as every other company of that class.

125 It is not legislation regulating the conditions upon which foreign insurance companies may do business within the State, for that is treated under a different Section of the Article, as for instance, Section 2705, which requires the appointment of an attorney to accept service, and matters incidental thereto, and various provisions in other sections in reference to fire insurance companies, not necessary to be here discussed.

It is an Act declaring upon what conditions any company, either domestic or foreign, may be licensed to do business within the State. The Act is to be construed as between all life insurance companies, irrespective of place of residence.

It is submitted that a foreign life insurance company is entitled to demand of the Insurance Commissioner to be licensed upon depositing an approved surety bond, provided the Insurance Commissioner accepts from either a domestic or foreign company in the like class an approved surety bond and so likewise in reference to domestic life insurance companies.

All of the Acts involved in this question affect the administration of the law by the Insurance Commissioner over all insurance companies, foreign and domestic, and the general provisions apply to both.

This disposes of any contention as to the right of a state to prescribe conditions precedent, no matter how unconstitutional or unjust, being imposed upon foreign insurance companies, as a condition of doing business within the State, and that brings us down to the cardinal proposition, that the law being as it is, placed upon the statute books, under such law so enacted, can the discrimination charge be made.

The facts in this case as disclosed by the record, and as set forth in the petition for rehearing, are undisputed. These facts are to be found on pages 2 to 6, inclusive, of the petitioner's argument, submitted upon the hearing, copies of which are annexed

126 hereto. Briefly stated, the facts are, that there being no law upon the statute books to justify the actions of the Insurance Commissioner, he made the ruling that all insurance companies which have not invested at least one-fourth of their reserve on South Carolina policies in the securities named in the Act of 1910 would be required to deposit the securities named in the Act of 1910, or certificates of deposit of banks located in this State, with the department, as a condition precedent to being licensed, and that from such companies no surety bond would be accepted, but that from companies which had invested at least one-fourth of their reserve on South Carolina policies in the securities named, of the State of South Carolina, no surety bond would be accepted; and proceeded to specify South Carolina, State, County or Municipal Bonds, first mortgage bonds of real estate in the State, first mortgage bonds of solvent domestic corporations, whose property is situ-

ate entirely within the State, or time certificates of deposits in banks of the State.

In the case of the Mutual Benefit Life Insurance Company, of Newark, New Jersey, the Insurance Commissioner varied this requirement and accepted a surety bond from that company, although it had not complied with his demand, and did not have the necessary 25 per cent. invested, as required by him. This petitioner complied with all the provisions of the statute and tendered an approved surety bond, to-wit, the bond of the petitioner and the Gulf and Atlantic Insurance Company, duly licensed by the Insurance Commissioner to do business in this State, and accepted by him on numerous other bonds of insurance companies of all classes.

The decision of the Supreme Court follows substantially the argument submitted at the hearing by the respondent, and also covers matters which *was* not considered or discussed by the petitioner in presenting its case to the Court through its counsel, and was
127 not replied to by counsel for the petitioner, because of the facts set forth in the petition for rehearing, and alluded to later on.

We submit that the two sections before referred to, namely, Section 2701 (Section 13) and Section 2699 (Section 10) be borne in mind, specially, in considering the decision of the Court.

The Court thus analyzes the Act: "It will thus be seen that the statute contemplates that the Insurance Commissioner must be satisfied by proper evidence in each and every case, that the applicant possesses the necessary qualifications for doing business in this State, and that in each case he must determine whether the public interest would be best subserved by requiring the particular applicant to deposit an approved bond or approved securities. By this construction alone can the discretionary powers conferred upon the Commissioner be exercised and made effective; therefore, the requirement that one applicant should deposit an approved bond and another applicant approved securities, is not a denial of the equal protection of the law. From these conclusions it necessarily follows that the petitioner was not deprived of his property without due process of the law."

It is submitted, with great deference and respect, that the learned Chief Justice erred in the conclusion reached as stated, in the opinion above quoted.

Permit us to analyze this Section 2699 (Section 10) as a condition precedent to granting a certificate of authority to do business in this State: Before granting a certificate of authority to do business in this State to any company, the Insurance Commissioner shall be satisfied, by proper evidence, as to what? (Bear in mind that the provision of Section 2699 (Section 10) applies to insurance companies of all classes, life, fire, casualty, surety, plate glass or
128 other companies): (1) that such applicant for license is duly qualified to do business under the laws of this State; (2) that it is safe and solvent; (3) that its dealings are fair and equitable; (4) that it conducts its business in a manner not contrary to the public interests. The Court takes the fourth sub-division, that

it conducts its business in a manner not contrary to the public interests, and concludes that under this fourth sub-division, the Insurance Commissioner has the right to require one applicant to deposit an approved bond, and another applicant approved securities, although in the same class, and that this fourth sub-division is to be construed in connection with Section 2404 (Section 13), and so qualifies such section that the express mandatory provisions of the section are nullified.

It is respectfully submitted that these two sections have no reference whatsoever to each other, so far as the fourth sub-division is concerned; that the manifest reason is that the applicant is knocking at the door of the Insurance Commissioner of the State for admission, and the Insurance Commissioner can only refuse to license it upon four grounds: Let us reverse the order and take the fourth ground first: That it conducts its business in a manner not contrary to the public interests. What does the plain language of this section mean? Can it possibly have any reference to the fact that when knocking at the door for admission, it holds in its hand an approved surety bond, that the fact of its tendering this approved surety bond shows that it conducts its business in a manner contrary to the public interests? Does any company which the Commissioner has also had knocking at his door, holding in its hand a surety bond, and asking its admission, conduct its business contrary to the public interests, because it tenders an approved surety bond?

Clearly this section can mean nothing more nor nothing less than that if a company applies for admission, and it is
129 proved to the satisfaction of the Commissioner, in the exercise of his judgment, that the business which this company has carried on previous to the time of its admission in all of the States and countries in which it operates, has been not contrary to public interests, that is, the company has conducted a clean, honest and honorable business, the law is mandatory that he must admit it; and the fact that in its construction of the law it tenders a surety company bond does not permit him to say that the company is not conducting its business in a manner subservient to the public interests and that for that reason he cannot license.

Sub-division three: that its dealings are fair and equitable. Sub-division two: that it is safe and solvent. Clearly these are unquestionable; and sub-division one: that such applicant for license is duly qualified to do business under the laws of this State, clearly means that it has complied with the provisions of the statute.

It is respectfully submitted that we ought to have a reconsideration of the conclusion of the Court, that the "Insurance Commissioner must determine whether the public interests would be best subserved by requiring the particular applicant to deposit an approved bond or approved securities," and the conclusion of the Court, "that by this construction alone can the discretionary powers conferred upon the Insurance Commissioner be exercised and made effective," is not, we respectfully submit, justified by anything which appears in this section granting the Insurance Commissioner any

COPY BOUND

discretionary powers, except that prescribed by the section of the Act whose constitutionality is challenged, namely, Section 2701 (Section 13) above quoted.

It is respectfully submitted that if the principles of law which are submitted in this Brief, and which were presented at the hearing by the petitioner, are applicable at all, this Section 2699 (Section 10), which is invoked by the Court in its conclusions,
130 cannot add to, or deduct from, the legal principles claimed by the petitioner, namely, that the Insurance Commissioner discriminated against this petitioner, and that thereby this petitioner was deprived of the equal protection of the law.

The next conclusion found by the Court was, "that inasmuch as the petitioner did not offer to deposit with the Insurance Commissioner any securities whatever, nor comply with the said ruling in any manner, but, in effect, attempted to exercise its own discretion by insisting that the Insurance Commissioner should accept the bond which was tendered; therefore, the petitioner is not in a position to raise the question as it has failed to show that said ruling was prejudicial to its rights."

It is respectfully submitted, with great deference to the Court, that the right of the petitioner, if it existed at all, under both the Federal and State Constitutions, was that if the Insurance Commissioner actually licensed any other life insurance company upon the delivery to him of an approved surety company bond, he was compelled to issue a license to this petitioner upon the tender of a similar bond, and it was not incumbent upon the petitioner to offer any approved securities whatever, but that, on the contrary, it would have been a useless, nugatory act for the petitioner to have offered any securities, or to have tendered them, because it was informed absolutely by the Commissioner that he only would accept the securities named in the Act of 1910, to-wit, South Carolina securities, as specified in the Act, a sufficient amount of which the petitioner did not possess, as is shown by the exhibits in this case, and that its right, if any at all, arose by virtue of its demand to be licensed by the tender of an approved surety bond, and that it was not called upon to tender anything else.

The language of the Insurance Commissioner is conclusive
131 of this question: "I am returning herewith bond of the Phoenix Mutual Life Insurance Company, of Hartford. I am unable to accept a bond from this company unless they furnish me with an affidavit showing that at least one-fourth of its reserve on South Carolina policies has been invested in the securities named in the Act of 1910. (See Brief of Pleadings, page 24, folios 95 and 96.)

Again, the Court says.—"That the statute (evidently referring to Section 10 of the Act of 1910, Section 2699 of the Code of 1912), conferred upon the Insurance Commissioner power to exercise his discretion in respect to the deposit of approved surety bond or approved securities." Reference to the Brief of the petitioner in this case will show that it was urgently argued and apparently accepted by the Court at the time of the hearing, that the Commissioner had

TO CLOSE IN CENTER

the right to demand either an approved bond or approved securities, but that in dealing with life insurance companies, being companies in the same class, if he demanded approved securities from one, he must demand approved securities from all, and that the language of the Act, by its very terms, gives no power to the Commissioner to discriminate between the companies themselves, Section 2701 (Section 13), but allows him to determine each year whether he will demand approved bond or approved securities from all like companies. The language of the Act shows clearly this intention, and it is impossible to escape its conclusions.

"Before licensing any insurance company to do business in this State, the Insurance Commissioner shall require each such company to deposit with him an approved bond or approved securities, in the discretion of the Commissioner, as follows: each legal reserve life insurance company, twenty thousand dollars."

132 The principles of law involved in this case may be briefly stated as follows:

The statute requires each such company to deposit with the Insurance Commissioner "an approved bond or approved securities in the discretion of the Commissioner; each legal reserve life insurance company, $20,000.00 and each other company $10,000.00." The words "approved bond or approved securities" have a clear, well-defined definition.

The Century Dictionary defines "approved"—"To show to be real or true," and illustrates "approved bill or note in commerce; a bill or note drawn by a solvent trustworthy party, and to which, therefore, no reasonable objection can be made.' "

Anderson's Law Dictionary defines a "bond" as "an instrument in writing that legally binds a party to do a certain thing"; and also, as "a deed whereby the obligor obliges himself, his heirs, executors and administrators, to pay a certain sum of money to another, at a day appointed."

The same author defines "securities,"—as "a written assurance for the return of the payment of money; evidence of indebtedness."

Under the terms of the Act, therefore, the Insurance Commissioner had the discretion of demanding to be deposited with him by all insurance companies of the same class, either "an approved bond," that is to say, the bond of a solvent trustworthy party, and to which therefore, no reasonable objection could be made; or, "approved securities," that is to say, such securities of a solvent trustworthy party, and to which, therefore, no objection could be made.

Had the Commissioner, in his circular of July 8, 1911, said,—"Under the law requiring insurance companies to make deposits with the Insurance Commissioner, it is within the discretion of the Commissioner to accept a surety bond or require the deposit of securities"; this is to notify you that on the next license year,

133 April 1, 1912, the Insurance Commissioner will ask all companies to deposit approved securities with the Department, his action would have been entirely within the law, and this case could not have arisen; but, by reference to such circular to be found at folio 24 of the record, the Commissioner proceeds to ask "all

companies which have not invested at least one-fourth of their reserve on South Carolina policies in the securities named in the Act of 1910, to deposit South Carolina securities with the Department; from such companies no surety bond will be accepted; from companies which have invested at least one-fourth of their reserves on South Carolina policies in securities of this State, a surety bond will be accepted"; and then proceeds to specify what securities he will receive upon deposit, picks out the securities specified by the terms of the Act in reference to another purpose entirely foreign and undertakes to add "time certificates of deposit in banks of the States," a security not mentioned in the statutes at all for any purpose in reference to insurance companies.

It is unnecessary to cite authority for the purpose of showing that the Insurance Commissioner derives no power, except from the Act, and that such power must be given to him by express terms.

By the terms of the circular, as issued by him, the Relator in this case was not permitted to tender anything but a limited class of securities, and the best bonds in the country, United States, State, Municipal and County, were incapable of acceptance, under the terms of his demand. The record overwhelmingly proves that he never once indicated to the Relator his willingness to accept anything except the securities specified in his circular of July 8, 1911, and expressly refused to accept a surety bond, and insisted upon the deposit of securities which the Commissioner himself had specified.

Not only is this an admitted fact, but in the case of the Mutual Benefit Life Insurance Company, of Newark, New Jersey,
134 from whom he accepted a surety bond, it appears that among the so-called South Carolina investments of that company, the Commissioner accepted and passed $469,600 of approved applications for loans which were not yet closed, and many of which, up to the present time, have never been closed.

The Commissioner, therefore, undertook to exercise an unlawful discretion and discrimination, by not only arbitrarily requiring South Carolina securities instead of "approved securities," but having taken the position under the terms of his circular, that he would not license any company with "a surety bond," unless they had deposited with him South Carolina securities specified as follows: "South Carolina State, County or Municipal bonds, first mortgage bonds of real estate in the State; first mortgage bonds of solvent domestic corporations, whose property is situate entirely within the State, or time certificates of deposits in banks of the State"; and went so far as to give notice as follows: "This notice is given now, so that you may provide yourself with such securities as may be satisfactory to you"; that is, the securities just above mentioned.

No provision of law justified this circular, but in the Commissioner's desire to increase investments of insurance companies in this State, he assumed the legislative function of demanding that the companies should invest in specified securities to the extent of 25 per cent., as a condition of the acceptance from such company of a surety company bond.

Assuming, for the sake of argument, that each one of the specified companies is in a class of its own, that is to say, that the life insurance companies stand in a class by themselves, and that the fire and other companies mentioned in the Act stand in another class by themselves, had the Commissioner the right in law to discriminate between individuals in the same class, and say to one, "If you do a certain thing you will be liscensed," and to another,
135 "If you do a certain thing you will not be licensed, because you have failed to do something else which I have required you to do"?

The law on this subject is laid down by the Supreme Court of the United States, in many cases, to only a few of which we deem necessary to refer.

"Due process of law within the meaning of the amendment is secured, if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government."

Leeper vs. Texas, 139 U. S., 462.

"It is enough that there is no discrimination in favor of one as against another of the same class."

Bell's Gap Railroad vs. Pennsylvania, 134 U. S., 232.
Home Insurance Company vs. New York, 134 U. S., 594.
Pacific Express Company vs. Siebert, 142 U. S., 339.

"The rule of equality, in respect to the subject, only requires the same means and methods to be applied impartially to all the constituents of each class, so that the law shall operate equally and uniformly upon all persons in similar circumstances. There is no objection, therefore, to the discrimination made as between railroad companies and other corporations in the methods and instrumentalities by which the value of their property is ascertained. The different nature and uses of their property justify the discrimination in this respect which the discretion of the Legislature has seen fit to impose."

Kentucky Railroad Tax Cases, 115 U. S., 337.

"The general purpose and scope of the Fourteenth Amend-
136 ment, and the general qualifications necessary to be applied to it, are well stated in Barbier vs. Connolly, 113 U. S., 27, 31. Mr. Justice Field, in delivering the opinion of the Court, there said: 'The Fourteenth Amendment, in declaring that no State (shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction, the equal protection of the laws), undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances, in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts;

that no impediment should be interposed to the pursuits of any one, except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition."

Bell's Gap Railroad Co. vs. Pennsylvania, 134 U. S., 238.

This case does not come within the limitations of the decision of this Court in Insurance Company vs. McMaster, 84 S. C., 495, but on the contrary, that case clearly indicates that where the statutes prescribe a condition, it must apply to all foreign corporations of the same class, equally and alike.

It is submitted that the Commissioner, by his circular of July 8, 1911, and subsequent demands in accordance therewith, discriminated against the Relator and thereby acted in violation of Section 5, Article I, of the Constitution of the State of South
137 Carolina, and the Fourteenth Amendment to the Constitution of the United States, and that, therefore, a mandamus should issue, as prayed for.

It is submitted that the undisputed proof is that the respondent herein accepted from the Mutual Benefit Life Insurance Company a surety bond, executed by itself and the Gulf and Atlantic Insurance Company, the surety of the petitioner here, although said company had not invested in the securities prescribed by the Insurance Commissioner 25 per cent. of its reserve, and refused to accept from this petitioner an identical bond, executed by the same company, as surety.

It is submitted that the Court, in its opinion, failed to consider this vital question as applicable to the principle of law involved in this case.

The petition for rehearing further shows that the respondent did not take, in the argument before the Court, the position, nor was it suggested that Section 2699 (Section 10) affected the provisions of Section 2701 (Section 13), and that the petitioner had no opportunity to reply to the position taken by the Court, and the petitioner respectfully submits that the complete answer to the position is: that this section has no application whatsoever to the provision as to the deposit of a surety bond.

The attention of the Court is respectfully called to paragraph three of the petition for rehearing. The members of the Court will doubtless recall the facts just as they occurred, which the petitioner submits are substantially as follows: That after the respondent, the Insurance Commissioner, had completed his argument, one of the Justices said to counsel for the petitioner that unless he desired to argue the matter further, the Court did not care to hear further from such counsel, and another of the Justices of the Court called the attention both of the counsel and the other members of the Court to the fact that on March 16, 1912, the Insurance Commissioner had addressed a letter to the petitioner wherein
138 he stated, "I am returning herewith bond of the Phoenix Mutual Life Insurance Company, of Hartford. I am unable to accept a bond from this Company unless they furnish me with

an affidavit showing at least one-fourth of its reserve on South Carolina policies has been invested in the securities named in the Act of 1910," and counsel for the petitioner read the contents of this letter and resumed his seat, satisfied that the Court was entirely with him, and that it was not necessary to answer the argument of the respondent, the Insurance Commissioner, as found in his Brief, which has apparently been adopted as the basis upon which the Court has reached its conclusions.

It is submitted that under these circumstances it is but just and proper that this petitioner should be permitted to answer the arguments advanced by the respondent, and to submit its authorities in contravention of the application of Section 2699 (Section 10) to the provisions of Section 2702 (Section 13), and that a rehearing should be granted so that a re-argument can be had.

It was a great surprise to the petitioner and its counsel, when the decision of the Court was filed, dismissing the petition in this case, for the reasons stated in the opinion, and which the petitioner believes, if it is given an opportunity, it can satisfy the Court should be corrected.

The petitioner further submits that inasmuch as a grave constitutional question is involved which affects the powers of the Insurance Commissioner on the one hand and the rights of the life insurance companies on the other, this petitioner being a purely mutual company, like a number of similar companies in the country, and the issue before the Court, thus involving the interest of millions of policyholders and billions of dollars of savings for the protection of widows and orphans invested in these companies, this question should be fully and completely argued before this
139 Court so that the final decision on the subject can be clear of any doubt and be accepted as the ultimate law defining the powers of the Insurance Commissioner on the one hand and the rights, duties, privileges and liabilities of the life insurance companies on the other.

It is submitted that the petitioner herein, under the circumstances of the hearing, did not have opportunity to answer the argument of the respondent upon which the decision is based.

It is respectfully submitted also that the Court has not fully considered the constitutional questions submitted for its consideration, and in applying Section 2699 (Section 10) of the Act, the Court has not given full force and effect to Section 2701 (Section 13) of the Act, and that the provisions of Section 2699 (Section 10) do not affect the legal questions involved at all.

Finally it is submitted: (1) That the ruling of the Commissioner in refusing to accept an approved surety bond from the petitioner was in violation of Section Five (5), Article One of the Constitution of South Carolina and the Fourteenth Amendment to the Constitution of the United States; (2) that Section 2699 (Section 10) has no application to and does not control, vary or alter in any respect the provisions of Section 2701 (Section 13); (3d) that it was the duty of the Commissioner, under the facts proved, to have issued the license to this petitioner, it having complied with all the provi-

sions of the statute governing the admission of insurance companies doing business in the State of South Carolina; (4) that the conclusions reached by this Honorable Court were *passed* upon an erroneous interpretation of the provisions of Section 2699 (Section 10) and an erroneous application of said Section 2701 (Section 13); and (5) that for the reasons above stated, a rehearing should be granted to the petitioner.

All of which is respectfully and deferentially submitted for the consideration of the Court.

MORDECAI & GADSDEN & RUTLEDGE.
For Relator.

Charleston, S. C., March 15, 1913.

Copy.

Order Dismissing Petition for Rehearing and Revoking Stay.

Filed May 1, 1913.

THE STATE OF SOUTH CAROLINA:

In the Supreme Court.

THE STATE OF SOUTH CAROLINA ex Relatione PHOENIX MUTUAL LIFE INSURANCE COMPANY, Petitioner,
versus
FITZ H. MCMASTER, as Insurance Commissioner of the State of South Carolina, Respondent.

STATE OF SOUTH CAROLINA ex Relatione LOUIS SHERFESEE and FRANK F. COVINGTON, Petitioners,
versus
FITZ H. MCMASTER, as Insurance Commissioner of the State of South Carolina, Respondent.

After careful consideration of the petition herein this Court is satisfied that no material question of law or of fact has either been overlooked or disregarded.

It is therefore ordered that the petition be dismissed and that the order heretofore granted staying the remittitur be revoked.

(Signed) EUGENE B. GARY, *C. J.*
C. A. WOODS, *A. J.*
D. E. HYDRICK, *A. J.*
R. C. WATTS, *A. J.*
T. B. FRASER, *A. J.*

142 *Petition for Writ of Error.*

Filed May 6, 1913.

STATE OF SOUTH CAROLINA:

In the Supreme Court.

THE STATE OF SOUTH CAROLINA ex Relatione PHOENIX MUTUAL LIFE INSURANCE COMPANY, Petitioner,
versus
FITZ H. MCMASTER, as Insurance Commissioner of the State of South Carolina, Respondent.

Petition for Writ of Error.

Now comes, Phoenix Mutual Life Insurance Company, Petitioner herein, and says, that on or about the Fifteenth (15th) day of March, Nineteen Hundred and Thirteen (1913), this Court entered Judgment herein in favor of the Respondent, and against this Petitioner, in which Judgment, and the proceedings had prior thereto in this cause, certain errors were committed to the prejudice of this Petitioner. All of which will more fully appear in the Assignment of Errors which is filed with this Petition.

That said Court is the Court of final resort in South Carolina.

Wherefore, this Petitioner prays that a Writ of Error may issue in this behalf, out of the Supreme Court of the United States, for the correction of the errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the said Supreme Court of the United States.

(S'g'd) MORDECAI & GADSDEN & RUTLEDGE,
(S'g'd) T. MOULTRIE MORDECAI,
Attorneys for Petitioner.

May 5, 1913.

143 *Assignment of Errors.*

Filed May 6, 1913.

STATE OF SOUTH CAROLINA:

In the Supreme Court.

THE STATE OF SOUTH CAROLINA ex Relatione PHOENIX MUTUAL LIFE INSURANCE COMPANY, Petitioner,
versus
FITZ H. MCMASTER, as Insurance Commissioner of the State of South Carolina, Respondent.

Assignment of Errors.

And now comes, Phoenix Mutual Life Insurance Company, Plaintiff in error in above matter, and respectfully represents that

it, Phoenix Mutual Life Insurance Company, feels aggrieved by the proceedings and Judgment of the Supreme Court of the State of South Carolina, in the above entitled cause, and in connection with its Petition for a Writ of Error herein, makes the following assignment of errors:

I. That the said Supreme Court of South Carolina, in its final decree, erred, in that it held that the requirement made by the Defendant in error herein, to-wit, that one applicant for a license to do business as a life insurance company in South Carolina, could deposit an approved bond, and another applicant for the same business must deposit approved securities, was not in violation of the Fourteenth Amendment to the Constitution of the United States, in that the discretionary power thus conferred upon the Defendant in error, by the Decree of the said Supreme Court of South Carolina, denied to the Plaintiff in error herein, the equal protection of the law, and deprived it of its property without due process of law.

144 II. That the said Supreme Court of South Carolina, in its final Decree, also erred, in that the said Supreme Court of South Carolina held that this Plaintiff in error was not entitled to have issued to it by the Defendant in error herein, a license to do business as a life insurance company in the State of South Carolina, for the year beginning April 1, 1912 and ending March 31, 1913; and also in that said Court held that the refusal to issue such license to the Plaintiff in error, was not in violation of the Fourteenth Amendment to the Constitution of the United States, in that the Plaintiff in error was denied the equal protection of the law, and was deprived of its property without due process of law.

III. In that the said Supreme Court of South Carolina erred in holding that the Plaintiff in error was not denied the equal protection of the law, and was not deprived of its property without due process of law, holding as follows, in the language of the said Court:

"The Act of 1910 (page 772) provides: 'Before granting a certificate of authority to do business in this State to any company, the Insurance Commissioner shall be satisfied by proper evidence, that such applicant for license, is duly qualified to do business, under the laws of this State; that it is safe and solvent; that its dealings are fair and equitable; and that it conducts its business in a manner not contrary to the public interests.'

It will thus be seen that the statute contemplates, that the Insurance Commissioner must be satisfied by proper evidence, in each and every case that the applicant possesses the necessary qualifications for doing business in this State, and that in each case, he must determine whether the public interest would be best subserved, by requiring the particular applicant, to deposit an approved bond, or approved securities. By this construction alone, can the discretionary powers conferred upon the Commissioner, be exercised, and made effective. Therefore, the requirement that one applicant should deposit an approved bond, and another applicant, approved securities, is not a denial of the equal protection of the law.

145 "From these conclusions it necessary follows, that the petitioner was not deprived of his property, without due process of law.

It is the judgment of this Court, that the application for a writ of mandamus be refused, and the appeal dismissed."

IV. In that the said Supreme Court of South Carolina also erred in holding that it justified the Defendant in error, the Insurance Commissioner of South Carolina, in requiring the Plaintiff in error to deposit securities as a condition precedent to being licensed to do business in said State, by and through a Statute of said State, to-wit, Section Ten (10) of the Act of the General Assembly of the State of South Carolina, of Nineteen Hundred and Ten (191-), being Number Four Hundred and Twenty (420), entitled,

"An Act to amend Sections 10 and 13 of an Act Entitled 'An Act to Amend an Act entitled (An Act to Establish the Insurance Department of South Carolina, and to provide for the conduct of the conduct of the same), Approved February 24th, 1908, by Striking out Sections 7, 8, 9, 10 and 12 thereof and inserting in lieu thereof other Sections to be known as Sections 7, 8, 9, 10, 11, 12, 13, 14 and 15,' Approved March 1, 1909, and to add thereto Sections to be known as 16, 17, 18, 19 and 20,"

which, if so applied to the case at Bar, is unconstitutional, null and void, because said Statute so applied, is in violation of, and in contravention to, the Fourteenth Amendment to the Constitution of the United States, in that such Statute deprives the Plaintiff in error of its property without due process of law, and denies to it the equal protection of the law.

Wherefore, Phoenix Mutual Life Insurance Company, Plaintiff in error herein, prays that the Judgment and Decree of the Supreme Court of the United States be reversed, and that the said
146 Supreme Court of the United States do cause further to be done herein what of right, and according to the law and customs of the United States, should be done.

(S'g'd) MORDECAI & GADSDEN & RUTLEDGE,
(S'g'd) T. MOULTRIE MORDECAI,
Attorneys for Plaintiff in Error.

May 5th, 1913.

147 *Writ of Error.*

Filed May 6, 1913.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable Judges of the Supreme Court of the State of South Carolina, Greeting:

Because in the record and proceedings, as also in the rendition of the Judgment of a plea which is in the said Supreme Court before you, or some of you, being the highest Court of law or equity of said State, in which a decision could be had in the said suit, between

the State, Ex Relatione Phoenix Mutual Life Insurance Company, a body corporate under the laws of the State of Connecticut, having its principal place of business at Hartford, in the State of Connecticut, Petitioner, and Fitz H. McMaster, as Insurance Commissioner of the State of South Carolina, Respondent-Defendant, wherein was drawn in question the validity of a treaty or Statute of, or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under said State, on the ground of their being repugnant to the Constitution or laws of the United States, and the decision was in favor of such, their validity; or wherein was drawn in question the construction of a clause of the Constitution or, of a treaty or Statute of, or commission held under the United States, and the decision was against the title, right, privilege or exemption specially set up or claimed under such clause of the said Constitution, treaty, Statute of, or commission, a manifest error hath happened to the great damage of the said Relator-Petitioner, the Phoenix Mutual Life Insurance Company, as by its Complaint or Petition appears; we being willing, that error, if any hath been, should be duly corrected and full and speedy
148 justice done to the parties aforesaid in this behalf, do command you, if Judgment be therein given, that then, under your Seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this Writ, so that you have the same in the said Supreme Court of the United States, at Washington, within Thirty (30) days from the date hereof; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause such further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable Edward Douglass White, Chief Justice of the United States, this Fifth (5th) day of May, in the Year of our Lord, Nineteen Hundred and Thirteen (1913).

(S'g'd) RICH'D W. HUTSON,
Clerk United States District Court,
District of South Carolina.

[Seal of Court.]

Allowed: Bond fixed at Five Hundred Dollars ($500.00), to be approved by the Clerk of the Supreme Court of the State of South Carolina.

May 6, 1913.

(S'g'd) EUGENE B. GARY,
Chief Justice of the Supreme Court
of South Carolina.

[Seal of Court.]

Attest:

(S'g'd) U. R. BROOKS,
Clerk of the Supreme Court
of South Carolina.

149 *Bond.*

Filed May 6, 1913.

STATE OF SOUTH CAROLINA:

In the Supreme Court.

STATE OF SOUTH CAROLINA ex Relatione PHOENIX MUTUAL LIFE INSURANCE COMPANY, Petitioner,

versus

FITZ H. MCMASTER, as Insurance Commissioner of the State of South Carolina, Respondent.

Bond.

Know all men by these presents, That we, Phoenix Mutual Life Insurance Company, as principal, and Fidelity and Deposit Company of Maryland, as surety, are held and firmly bound unto Fitz H. McMaster, as Insurance Commissioner of the State of South Carolina, in the sum of Five Hundred Dollars ($500.00), to be paid to the said obligee, his successors in office, executors, administrators and assigns, to the payment of which well and truly to be made, we bind ourselves and our successors, heirs, executors and administrators, jointly and severally, firmly by these presents.

In witness whereof, the said Phoenix Mutual Life Insurance Company has caused these Presents to be signed by T. Moultrie Mordecai, its Attorney, for this purpose duly authorized, and its corporate seal to be attached, and the Fidelity and Deposit Company of Maryland, has caused these Presents to be signed by T. Moultrie Mordecai, its Attorney in Fact, and its corporate seal attached, this Fifth (5th) day of May, Anno Domini, Nineteen Hundred and Thirteen (1913).

Whereas, the above named Plaintiff in error has prose-
150 cuted a Writ of Error in the Supreme Court of the United States to reverse the Judgment rendered in the above entitled action by the Supreme Court of the State:

Now, therefore, the condition of this obligation is such, That if the above named Plaintiff in error shall prosecute their said Writ of Error to effect and answer *to* costs and damages, if it shall fail to make its plea, then this obligation shall be void; otherwise, to remain in full force and effect.

PHOENIX MUTUAL LIFE INSURANCE COMPANY,

(Sgd.) By T. MOULTRIE MORDECAI,
Its Authorized Attorney.

FIDELITY & DEPOSIT COMPANY OF MARYLAND,

(Sgd.) By T. MOULTRIE MORDECAI,
Attorney-in-Fact.

[Corporate Seal of Phoenix Mutual Life Insurance Co.]

[Corporate Seal of Fidelity & Deposit Co. of Md.]

Signed, Sealed and Delivered in the presence of—

(Sgd.) H. G. LOWRY.

(Sgd.) M. E. LE PRINCE.

151 STATE OF SOUTH CAROLINA,
County of Charleston:

Personally appeared before me M. E. Le Prince, who being duly sworn, says that she saw the Corporate Seal of the Phoenix Mutual Life Insurance Company affixed to the within written bond, and that she also saw T. Moultrie Mordecai, its duly authorized Attorney, sign the same, and that she, deponent, with H. G. Lowry, witnessed the execution and delivery thereof as the act and deed of the said Phoenix Mutual Life Insurance Company.

(Sgd.) M. E. LE PRINCE.

Sworn to and Subscribed before me this 5th day of May, 1913.

(Sgd.) CHARLES L. PEARLSTINE,
Notary Public for South Carolina.

STATE OF SOUTH CAROLINA,
County of Charleston:

Personally appeared before me M. E. Le Prince, who being duly sworn, says that she saw the Corporate Seal of the Fidelity and Deposit Company of Maryland affixed to the within written bond, and that she also saw T. Moultrie Mordecai, Attorney in Fact of said Fidelity and Deposit Company of Maryland, sign the same, and that she, deponent, with H. G. Lowry witnessed the execution and delivery thereof as the act and deed of the said Fidelity and Deposit Company of Maryland.

(Sgd.) M. E. LE PRINCE.

Sworn to and Subscribed before me this 5th day of May, 1913.

(Sgd.) CHARLES L. PEARLSTINE,
[SEAL.] *Notary Public for South Carolina.*

152 Approved May 6, 1913.

[Seal of Court.]

(Sgd.) U. R. BROOKS,
Clerk of Supreme Court of South Carolina.

153 *Citation.*

Filed May 6, 1913.

UNITED STATES OF AMERICA:

To Fitz H. McMaster, as Insurance Commissioner of the State of South Carolina:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, within Thirty (30) days of the date hereof, pursuant to a Writ of Error filed in the Clerk's Office of the Supreme Court of the State of South Carolina, wherein Phoenix Mutual Life Insurance Company is the Plain-

tiff in error, and you are Defendant in error, to show cause, if any there be, why the Judgment rendered against the said Plaintiff in error, as in said Writ of Error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States, this Sixth (6th) day of May, Nineteen Hundred and Thirteen (1913).

(Sgd.) EUGENE B. GARY,
Chief Justice of the Supreme Court of South Carolina.

Due service of this Citation received, this seventh (7th) day of May, 1913.

(Sgd.) FITZ H. McMASTER,
Ins. Comm., Respondent.

154 *Petition for Writ of Error.*

Filed May 6, 1913.

STATE OF SOUTH CAROLINA:

In the Supreme Court.

STATE OF SOUTH CAROLINA ex Relatione LOUIS SHERFESEE and FRANK E. COVINGTON, Petitioners,
versus
FITZ H. McMASTER, as Insurance Commissioner of the State of South Carolina, Respondent.

Petition for Writ of Error.

Now come, Louis Sherfesee and Frank F. Covington, Petitioners herein, and say, that on or about the Fifteenth (15th) day of March, Nineteen Hundred and Thirteen (1913), this Court entered Judgment herein in favor of the Respondent, and against these Petitioners, in which Judgment, and the proceedings had prior thereto in this cause, certain errors were committed to the prejudice of these Petitioners. All of which will more fully appear in the Assignment of Errors which is filed with this Petition.

That said Court is the Court of final resort in South Carolina.

Wherefore, these Petitioners pray that a Writ of Error may issue in this Behalf out of the Supreme Court of the United States, for the correction of the errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the said Supreme Court of the United States.

(S'g'd) MORDECAI & GADSDEN & RUTLEDGE,
(S'g'd) T. MOULTRIE MORDECAI,
Attorneys for Petitioners.

May 5th, 1913.

155 *Assignment of Errors.*

Filed May 6, 1913.

STATE OF SOUTH CAROLINA:

In the Supreme Court.

STATE OF SOUTH CAROLINA ex Relatione LOUIS SHERFESEE and FRANK E. COVINGTON, Petitioners,
versus
FITZ H. MCMASTER, as Insurance Commissioner of the State of South Carolina, Respondent.

Assignment of Errors.

And now comes, Louis Sherfesee and Frank F. Covington, Plaintiffs in error in above matter, and represent that they, Louis Sherfesee and Frank F. Covington, each and both of them, feel aggrieved by the proceedings and Judgment of the Supreme Court of the State of South Carolina in the above entitled cause, and in connection with their Petition for a Writ of Error herein, make the following assignment of errors:

I. That the said Supreme Court of South Carolina, in its final Decree, erred in that it held that the requirement made by the Defendant in error herein, to-wit, that one foreign life insurance company, applicant for a license to do business as a life insurance company in South Carolina, could deposit an approved bond, and another applicant for the same business must deposit approved securities, was not violation of the Fourteenth Amendment to the Constitution of the United States, in that the discretionary power thus conferred upon the Defendant in error by the Decree of the said Supreme Court of South Carolina, denied to the Plaintiff's in error herein, the equal protection of the law, and deprived each and both of them of his and their property without due process of law.

156 II. In that the said Supreme Court of South Carolina, in its final Decree, also erred in that the said Supreme Court held that these Plaintiffs in error, were not entitled to have issued to them, and each of them, by the Defendant in error herein, a license to do business as agents of a life insurance company in the State of South Carolina, for the year beginning April 1, 1912, and ending March 31, 1913, and also in that the said Court held, that the refusal to issue such license to the Plaintiffs in error, was not in violation of the Fourteenth Amendment to the Constitution of the United States, in that the Plaintiffs in error were denied the equal protection of the law, and were deprived of their property without due process of law.

III. In that the said Supreme Court of South Carolina erred in holding that the Plaintiffs in error were not denied the equal protection of the law, and were not deprived of their property without

due process of law, holding as follows, in the language of the said Court:

"The Act of 1910 (page 772) provides: 'Before granting a certificate of authority to do business in this State to any company, the Insurance Commissioner shall be satisfied by proper evidence, that such applicant for license, is duly qualified to do business, under the laws of this State; that it is safe and solvent; that its dealings are fair and equitable; and that it conducts its business in a manner not contrary to the public interests.'

It will thus be seen that the statute contemplates, that the Insurance Commissioner must be satisfied by proper evidence, in each and every case, that the applicant possesses the necessary qualifications for doing business in this State, and that in each case, he must determine whether the public interest would be best subserved, by requiring the particular applicant, to deposit an approved bond, or approved securities. By this construction alone, can the discretionary powers conferred upon the Commissioner, be exercised, and made effective. Therefore, the requirement that one applicant should deposit an approved bond, and another applicant, approved securities, is not a denial of the equal protection of the law.

157 "From these conclusions it necessarily follows, that the petitioner was not deprived of his property, without due process of law.

"It is the judgment of this Court, that the application for a writ of mandamus be refused and the appeal dismissed."

IV. In that the said Supreme Court of South Carolina also erred in holding that it justified the Defendant in error, the Insurance Commissioner of South Carolina, in requiring the Phoenix Mutual Life Insurance Company, for whom the Plaintiffs in error, are agents, to deposit securities as a condition precedent to being licensed to do business in the said State, by and through a Statute of said State, to-wit, Section Ten (10), of the Act of the General Assembly of the State of South Carolina, of Nineteen Hundred and Ten (1910), Number Four Hundred and Twenty (420), entitled:

"An Act to amend Sections 10 and 13 of an Act Entitled 'An Act to Amend an Act entitled (An Act to Establish the Insurance Department of South Carolina, and to provide for the conduct of the same), Approved February 24th, 1908, by Striking out Sections 7, 8, 9, 10 and 12 thereof and inserting in lieu thereof other Sections to be known as Sections 7, 8, 9, 10, 11, 12, 13, 14 and 15,' Approved March 1, 1909, and to add thereto Sections to be known as 16, 17, 18, 19 and 20,"

which, if so applied to the case at Bar, is unconstitutional, null and void, because said Statute so applied, is in violation of, and in contravention to, the Fourteenth Amendment to the Constitution of the United States, in that said Statute deprives the Plaintiffs in error of their property without due process of law, and denies to them the equal protection of the law.

Wherefore, Louis Sherfesee and Frank F. Covington, Plaintiffs

COPY BOUND TO

in error herein, pray that the Judgment and Decree of the Supreme Court of the State of South Carolina be reversed, and that the said Supreme Court of the United States do cause further to be
158 done herein, what of right and according to the laws and customs of the United States should be done.

(S'g'd) MORDECAI & GADSDEN & RUTLEDGE,
T. MOULTRIE MORDECAI,
Attorneys for Plaintiffs in Error.

May 5th, 1913.

159 *Writ of Error.*

Filed May 6, 1913.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable Judges of the Supreme Court of the State of South Carolina, Greeting:

Because in the record and proceedings, as also in the rendition of the Judgment of a plea which is in the said Supreme Court before you, or some of you, being the highest Court of law or equity of said State, in which a decision could be had in the said suit, between the State, Ex Relatione, Louis Sherfesee and Frank F. Covington, Petitioners, and Fitz H. McMaster, as Insurance Commissioner of the State of South Carolina, Respondent-Defendant, wherein was drawn in question the validity of a treaty or Statute of, or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a Statute of, or an authority exercised under said State, on the ground of their being repugnant to the Constitution or laws of the United States, and the decision was in favor of such, their validity; or wherein was drawn in question the construction of a clause of the Constitution or of a treaty, or Statute of, or commission held under the United States, and the decision was against the title, right, privilege or exemption specially set up or claimed under such clause of the said Constitution, treaty, Statute of, or commission, a manifest error hath happened to the great damage of the said Relators-Petitioners, Louis Sherfesee and Frank F. Covington, as by their Complaint or petition appears; we being willing, that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your Seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concern-
160 ing the same, to the Supreme Court of the United States, together with this Writ, so that you have the same in the said Supreme Court of the United States, at Washington, within Thirty (30) days from the date hereof; that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause such

TO CLOSE IN CENTER

further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable Edward Douglass White, Chief Justice of the United States, this Fifth (5th) day of May, in the Year of our Lord, Nineteen Hundred and Thirteen (1913).

(S'g'd) RICH'D W. HUTSON,
Clerk United States District Court,
District of South Carolina.

Allowed: Bond fixed at Five Hundred dollars ($500.00) to be approved by the Clerk of the Supreme Court of the State of South Carolina.

(S'g'd) EUGENE B. GARY,
Chief Justice of the Supreme Court of South Carolina.

May, 1913.

[Seal of Court.]

Attest:
(S'g'd) U. R. BROOKS,
Clerk of the Supreme Court of South Carolina.

161 ***Bond.***

Filed May 6, 1913.

STATE OF SOUTH CAROLINA:

In the Supreme Court.

STATE OF SOUTH CAROLINA ex Relatione LOUIS SHERFESEE and FRANK F. COVINGTON, Petitioners,
versus
FITZ H. MCMASTER, as Insurance Commissioner of the State of South Carolina, Respondent.

Bond.

Know all men by these presents, That we, Louis Sherfesee and Frank F. Covington, as principals, and Fidelity and Deposit Company of Maryland, as surety, are held and firmly bound unto Fitz H. McMaster, as Insurance Commissioner of the State of South Carolina in the sum of Five Hundred Dollars ($500.00), to be paid to the said Obligee, his successors in office, executors, administrators and assigns to the payment of which well and truly to be made, we bind ourselves, and each and every of our successors, heirs, executors and administrators, jointly and severally, firmly by these Presents.

In witness whereof, the said Louis Sherfesee and Frank F. Covington have caused these Presents to be signed and sealed, and the Fidelity and Deposit Company of Maryland, has caused these Pres-

COPY BOUND TO

ents to be signed by T. Moultrie Mordecai, its Attorney in Fact, and its corporate seal attached, this Fifth (5th) day of May, anno Domini, Nineteen Hundred and Thirteen (1913).

Whereas, the above named Plaintiffs in error have prosecuted a Writ of Error in the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the Supreme Court of the State:

162 Now, therefore, the condition of this obligation is such, That if the above named Plaintiffs in error shall prosecute their said Writ of Error to effect and answer to costs and damages, if they shall fail to make their plea, then this obligation shall be void; otherwise, to remain in full force and effect.

(S'g'd) LOUIS SHERFESEE, [L. S.]
(S'g'd) FRANK F. COVINGTON, [L. S.]
(S'g'd) By T. MOULTRIE MORDECAI,
Duly Authorized Attorney.
FIDELITY & DEPOSIT COMPANY OF MARYLAND,
(S'g'd) By T. MOULTRIE MORDECAI,
Attorney in Fact.

[Corporate Seal of Fidelity & Deposit Co. of Md.]

Signed, Sealed and Delivered in the presence of:
(S'g'd) M. E. LE PRINCE.
(S'g'd) ELMER E. ROUSE.

163 STATE OF SOUTH CAROLINA,
County of Charleston:

Personally appeared before me M. E. Le Prince, who being duly sworn, says that she was present and saw Louis Sherfesee, one of the Petitioners herein, sign, seal, and as his act and bond, deliver the within written bond, and that she, with Elmer E. Rouse, witnessed the execution of the same.

(S'g'd) M. E. LE PRINCE.

Sworn to and Subscribed before me this 5th day of May, 1913.
(S'g'd) CHARLES L. PEARLSTINE,
[SEAL.] *Notary Public for South Carolina.*

STATE OF SOUTH CAROLINA,
County of Charleston:

Personally appeared before me M. E. Le Prince, who being duly sworn, says that she was present and saw Frank F. Covington, by T. Moultrie Mordecai, his duly authorized Attorney, sign, seal, and as his act and deed, deliver the within written bond, and that she, with Elmer E. Rouse witnessed the execution of the same.

(S'g'd) M. E. LE PRINCE.

Sworn to and subscribed before me this 5th day of May, 1913.
(S'g'd) CHARLES L. PEARLSTINE,
[SEAL.] *Notary Public for South Carolina.*

TO CLOSE IN CENTER

STATE OF SOUTH CAROLINA,
County of Charleston:

Personally appeared before me M. E. Le Prince, who being duly sworn, says that she saw the Corporate Seal of the Fidelity and Deposit Company of Maryland affixed to the within written bond, and that she also saw T. Moultrie Mordecai, Attorney in Fact of said Fidelity and Deposit Company of Maryland, sign the same, and that she, deponent, with Elmer E. Rouse, witnessed the execution and delivery thereof as the act and deed of the said Fidelity and Deposit Company of Maryland.

(S'g'd) M. E. LE PRINCE.

Sworn to and Subscribed before me this 5th day of May, 1913.

(S'g'd) CHARLES L. PEARLSTINE,
[SEAL.] *Notary Public for South Carolina.*

164 Approved, May 6, 1913.

(S'g'd) U. R. BROOKS,
Clerk of Supreme Court of South Carolina.

[Seal of Court.]

165 ***Citation.***

Filed May 6, 1913.

UNITED STATES OF AMERICA:

To Fitz H. McMaster, as Insurance Commissioner of the State of South Carolina:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, within Thirty (30) days of the date hereof, pursuant to a Writ of Error filed in the Clerk's Office of the Supreme Court of the State of South Carolina, wherein Louis Sherfesee and Frank F. Covington are the plaintiffs in error, and you are Defendant in error, to show cause, if any there be, why the Judgment rendered against the said Plaintiffs in error, as in said Writ of Error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States, this Sixth (6th) day of May, Nineteen Hundred and Thirteen (1913).

(S'g'd) EUGENE B. GARY,
Chief Justice of the Supreme Court of South Carolina.

Due service of this Citation received this Seventh (7th) day of May, 1913.

(S'g'd) FITZ H. McMASTER,
Ins. Comm'r, Respondent.

COPY BOUND TO

166 *Return to Writ of Error.*

Filed May 20, 1913.

STATE OF SOUTH CAROLINA:

In the Supreme Court.

STATE OF SOUTH CAROLINA ex Relatione PHOENIX MUTUAL LIFE INSURANCE COMPANY, Plaintiff in Error,
versus
FITZ H. MCMASTER, as Insurance Commissioner of the State of South Carolina, Defendant in Error.

STATE OF SOUTH CAROLINA ex Relatione LOUIS SHERFESEE and FRANK F. COVINGTON, Plaintiffs in Error,
versus
FITZ H. MCMASTER, as Insurance Commissioner of the State of South Carolina, Defendant in Error.

Return to Writs of Error.

I, U. R. Brooks, Clerk of the Supreme Court of the State of South Carolina, by way of Return to the Writs of Error directed to said Court by the Supreme Court of the United States, in the two above entitled causes, consolidated together, herewith transmit, under my Hand and seal, a true copy of the record and of the Assignment of Errors and of all proceedings in the said two cases, together with true copies of all Opinions filed in the said two cases, and I hereby certify that the record herewith transmitted, is complete, containing in itself, and not by reference, all papers, exhibits, depositions
167 and other proceedings necessary to the hearing of the said two cases in the Supreme Court of the United States.

Witness my Hand and the Seal of the Supreme Court of the State of South Carolina, this Twentieth (20th) day of May, A. D. 1913.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS,
Clerk of the Supreme Court of South Carolina.

168 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable Judges of the Supreme Court of the State of South Carolina, Greeting:

Because in the record and proceedings, as also in the rendition of the Judgment of a plea which is in the said Supreme Court before you, or some of you, being the highest Court of law or equity of said State, in which a decision could be had in the said suit, between the State, Ex Relations, Phoenix Mutual Life Insurance Company,

TO CLOSE IN CENTER

a body corporate under the laws of the State of Connecticut, having its principal place of business at Hartford, in the State of Connecticut, Petitioner, and Fitz H. McMaster, as Insurance Commissioner of the State of South Carolina, Respondent-Defendant, wherein was drawn in question the validity of a treaty or Statute of, or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statue of, or an authority exercised under said State, on the ground of their being repugnant to the Constitution or laws of the United States, and the decision was in favor of such, their validity; or wherein was drawn in question the construction of a clause of the Constitution or, of a treaty or Statute of, or commission held under the United States, and the decision was against the title, right, privilege or exemption specially set up or claimed under such clause of the said Constitution, treaty, Statute of, or commission, a manifest error hath happened to the great damage of the said Relator-Petitioner, the Phoenix Mutual Life Insurance Company, as by its Complaint or Petition appears;

we being willing, that error, if any hath been,
169 should be duly corrected and full and speedy justice be done to the parties aforesaid in this behalf, do command you, if Judgment be therein given, that then, under your Seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this Writ, so that you have the same in the said Supreme Court of the United States, at Washington, within Thirty (30) days from the date hereof; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause such further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable Edward Douglass White, Chief Justice of the United States, this Sixth (6th) day of May, in the Year of our Lord, Nineteen Hundred and Thirteen (1913).

[Seal United States District Court, Eastern District So. Ca.]

RICH'D W. HUTSON,
Clerk United States District Court,
District of South Carolina.

Allowed: Bond fixed at Five Hundred Dollars ($500.00), to be approved by the Clerk of the Supreme Court of the State of South Carolina.

EUGENE B. GARY,
Chief Justice of the Supreme Court
of South Carolina.

May 6, 1913.

[Seal Supreme Court of South Carolina.]

Attest:
U. R. BROOKS,
Clerk of the Supreme Court of South Carolina.

170 [Endorsed:] Writ of Error. Filed Supreme Court, S. C. May 6, 1913. U. R. Brooks, Clerk.

171 UNITED STATES OF AMERICA:

To Fitz H. McMaster, as Insurance Commissioner of the State of South Carolina:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, within Thirty (30) days of the date hereof, pursuant to a Writ of Error filed in the Clerk's Office of the Supreme Court of the State of South Carolina, wherein Phoenix Mutual Life Insurance Company is the Plaintiff in error, and you are Defendant in error, to show cause, if any there be, why the Judgment rendered against the said Plaintiff in error, as in said Writ of Error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States, this Sixth (6th) day of May, Nineteen Hundred and Thirteen (1913).

EUGENE B. GARY,
Chief Justice of the Supreme Court of South Carolina.

Due service of this Citation received, this Sixth (6th) day of May, 1913.

FITZ H. McMASTER.

172 [Endorsed:] Citation. Filed Supreme Court S. C. May 6, 1913. U. R. Brooks, Clerk.

173 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable Judges of the Supreme Court of the State of South Carolina, Greeting:

Because in the record and proceedings, as also in the rendition of the Judgment of a plea which is in the said Supreme Court before you, or some of you, being the highest Court of law or equity of said State, in which a decision could be had in the said suit, between the State, Ex Relatione, Louis Sherfesee and Frank F. Covington, Petitioners, and Fitz H. McMaster, as Insurance Commissioner of the State of South Carolina, Respondent-Defendant, wherein was drawn in question the validity of a treaty or Statute of, or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a Statute of, or an authority exercised under said State, on the ground of their being repugnant to the Constitution or laws of the United States, and the decision was in favor of such,

their validity; or wherein was drawn in question the construction of a clause of the Constitution or of a treaty, or Statute of, or commission held under the United States, and the decision was against the title, right, privilege or exemption specially set up or claimed under such clause of the said Constitution, treaty, Statute of, or commission, a manifest error hath happened to the great damage of the said Relators-Petitioners, Louis Sherfesee and Frank F. Covington, as by their Complaint or Petition appears; we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your Seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme
174 Court of the United States, together with this Writ, so that you have the same in the said Supreme Court of the United States, at Washington, within Thirty (30) days from the date hereof; that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause such further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable Edward Douglass White, Chief Justice of the United States, this Sixth (6) day of May, in the Year of our Lord, Nineteen Hundred and Thirteen (1913).

[Seal United States District Court, Eastern District, So. Ca.]

RICH'D W. HUTSON,
Clerk United States District Court,
District of South Carolina.

Allowed: Bond fixed at Five Hundred Dollars ($500.00) to be approved by the Clerk of the Supreme Court of the State of South Carolina.

[Seal Supreme Court of South Carolina.]

EUGENE B. GARY,
Chief Justice of the Supreme Court of South Carolina.

May 6, 1913.

Attest:
U. R. BROOKS,
Clerk of the Supreme Court of South Carolina.

175 [Endorsed:] Writ of Error. Filed Supreme Court S. C., May 6, 1913. U. R. Brooks, Clerk.

176 UNITED STATES OF AMERICA:

To Fitz H. McMaster, as Insurance Commissioner of the State of South Carolina:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, within Thirty

(30) days of the date hereof, pursuant to a Writ of Error filed in the Clerk's Office of the Supreme Court of the State of South Carolina, wherein Louis Sherfesee and Frank F. Covington are the Plaintiffs in error, and you are Defendant in error, to show cause, if any there be, why the Judgment rendered against the said Plaintiffs in error, as in said Writ of Error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States, this sixth (6th) day of May, Nineteen Hundred and Thirteen (1913).

EUGENE B. GARY,
Chief Justice of the Supreme Court of South Carolina.

Due service of this Citation received, this Sixth (6th) day of May, 1913.

FITZ H. McMASTER.

177 [Endorsed:] Citation. Filed Supreme Court of S. C., May 6, 1913. U. R. Brooks, Clerk.

Endorsed on cover: File No. 23,749. South Carolina Supreme Court. Term No. 195. The State of South Carolina ex Relatione Phoenix Mutual Life Insurance Company, plaintiff in error, vs. Fitz H. McMaster, as Insurance Commissioner of the State of South Carolina. File No. 23,750. Term No. 196. The State of South Carolina ex Relatione Louis Sherfesee and Frank F. Covington, plaintiffs in error, vs. Fitz H. McMaster, as Insurance Commissioner of the State of South Carolina. Filed June 13th, 1913. File Nos. 23,749 and 23,750.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 195

THE STATE OF SOUTH CAROLINA *EX RELATIONE* PHOENIX MUTUAL LIFE INSURANCE COMPANY, PLAINTIFF IN ERROR,

vs.

FITZ H. McMASTER, AS INSURANCE COMMISSIONER OF THE STATE OF SOUTH CAROLINA.

No. 196

THE STATE OF SOUTH CAROLINA *EX RELATIONE* LOUIS SHERFESEE AND FRANK P. COVINGTON, PLAINTIFFS IN ERROR,

vs.

FITZ H. McMASTER, AS INSURANCE COMMISSIONER OF THE STATE OF SOUTH CAROLINA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

BRIEF OF PLAINTIFFS IN ERROR.

T. MOULTRIE MORDECAI,
Counsel for Plaintiffs in Error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 195

THE STATE OF SOUTH CAROLINA *EX RELATIONE* PHOENIX MUTUAL LIFE INSURANCE COMPANY, PLAINTIFF IN ERROR,

vs.

FITZ H. McMASTER, AS INSURANCE COMMISSIONER OF THE STATE OF SOUTH CAROLINA.

No. 196

THE STATE OF SOUTH CAROLINA *EX RELATIONE* LOUIS SHERFESEE AND FRANK F. COVINGTON, PLAINTIFFS IN ERROR,

vs.

FITZ H. McMASTER, AS INSURANCE COMMISSIONER OF THE STATE OF SOUTH CAROLINA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

BRIEF OF PLAINTIFFS IN ERROR.

T. MOULTRIE MORDECAI,
Counsel for Plaintiffs in Error.

STATEMENT.

Both of these cases come before this court on Writs of Error to the Supreme Court of the State of South Carolina, and involve the same questions, the first case being that of the

Phoenix Mutual Life Insurance Company, the Plaintiff in Error, and the second that of Louis Sherfesee and Frank F. Covington, also Plaintiffs in Error, agents in South Carolina of the above named life insurance company.

The proceedings respectively brought in this case by way of mandamus were instituted under the provisions of an Act of the General Assembly of South Carolina which became law on the 20th day of February, 1912. (27 Statutes at Large, 768). This Act is as follows:

"AN ACT TO PROVIDE A METHOD OF APPEAL FROM THE ORDERS, RULINGS OR DECISIONS OF THE INSURANCE COMMISSIONER.

Section 1. Be it enacted by the General Assembly of the State of South Carolina, That any order, ruling or decision of the Insurance Commissioner in all matters, either of law or discretion, within the jurisdiction of his department, shall be subject to review by certiorari or mandamus proceedings before any Circuit Judge or Justice of the Supreme Court, which may be held at Chambers or in open Court upon thirty days' notice to the Insurance Commissioner.

Sec. 2. All Acts or parts of Acts inconsistent herewith be, and the same be, repealed."

The construction of Section 13 of the Act of March 8, 1910, known as Act No. 420, 26 Statutes at Large, 774, is involved in these proceedings, and the question arises as to whether the Defendant in Error, the Insurance Commissioner of the State of South Carolina, had the power to refuse to license the Plaintiff in Error, the Phoenix Mutual Life Insurance Company, because the Plaintiff in Error refused to comply with the demand of the Defendant in Error, the Insurance Commissioner, as hereinafter set forth.

Section 13 of this South Carolina Statute reads as follows:

"Section 13. Before licensing any insurance company to do business in this State, the Insurance Commissioner shall require each such company to deposit with him an approved bond or approved securities, in the discretion of the Commissioner, as follows: Each legal reserve life insurance company, twenty thousand dollars; each fire, accident, or casualty or surety insurance company, or any company not herein

specified, ten thousand dollars: PROVIDED, That domestic industrial insurance companies shall in no case be required to deposit more than the legal reserve on their policies, but not less than one thousand dollars, which said deposit may be made at the rate of five hundred dollars a year, on April 1st of each year, until the whole be deposited; each domestic life insurance company doing business on a recognized table of mortality with interest assumption not higher than four per centum per annum, not less than three thousand dollars. But each such domestic company shall keep on deposit with the Insurance Commissioner at all times, not less than the legal reserve on all of its outstanding policies: PROVIDED, FURTHER, That the terms of this Section shall not apply to domestic mutual assessment companies not doing business in more than two adjoining counties. If a bond be given, it shall be conditioned to pay any judgment entered up against any such company in any court of competent jurisdiction in this State, and such judgment shall be a lien upon the bond or securities. In case a bond is given, the judgment creditor shall have the right to bring suit on said bond for the satisfaction of the judgment in the county in which the judgment is received."

Prior to the year commencing April 1, 1912, the Plaintiff in Error, and all other insurance companies had been permitted to give a Surety Company Bond under the provisions of this Section. On July 8, 1911, the Defendant in Error notified the Plaintiff in Error that unless the Plaintiff in Error had invested at least one-fourth of its reserve on South Carolina policies in the securities named in the Act of 1910, a surety bond would not be accepted and it would be required to deposit South Carolina securities, but that from companies which had invested at least one-fourth of their reserve on South Carolina policies in the securities of this State, surety bond would be accepted, and proceded to specify what South Carolina securities the Department would accept. This circular is, as follows (Record, page 47):

Insurance Department of South Carolina.

Columbia, S. C., July 8, 1911.

Phoenix Mutual Insurance Co., Hartford, Connecticut.

Dear Sirs: Under the law requiring insurance companies

to make deposits with the Insurance Commissioner, it is within the discretion of the Commissioner to accept a surety bond, or to require the deposit of securities.

This is to notify you that, on the next license year, April 1, 1912, the Insurance Commissioner will ask all companies, which have not invested at least one-fourth of their reserve on South Carolina policies in the securities named in the Act of 1910, to deposit South Carolina securities with the Department. From such companies no surety bond will be accepted.

From companies which have invested at least one-fourth of their reserves on South Carolina policies in securities of this State, a surety bond may be accepted.

This department will receive on deposit South Carolina State, county or municipal bonds; first mortgage bonds of real estate in the State; first mortgage bonds of solvent domestic corporations, whose property is situate entirely within the State; or time certificates of deposits in banks of the State.

This notice is given now, so that you may provide yourself with such securities as may be satisfactory to you.

Very truly,

(Signed) F. H. McMASTER,
Insurance Commissioner.

In the case of other life insurance companies, notably in that of the Mutual Benefit Insurance Company of Newark, N. J., the Defendant in Error accepted a surety bond, and in this case accepted and passed some $470,000 of approved applications for loans which were not yet closed and many of which, up to the time of the final hearing in the Supreme Court, had never been closed and, therefore, this latter company was licensed without compliance with the requirements of the circular of the Defendant in Error himself. On March 25, 1912, the Plaintiff in Error tendered to the Defendant in Error, as Insurance Commissioner of the State of South Carolina, $160.50 in United States legal tenders and its bond with itself as principal and the Gulf and Atlantic Insurance Company, a South Carolina corporation, duly licensed to do the business of a surety company as surety in the form prescribed by the Defendant in Error and demanded that the Plaintiff in Error either accept or decline the tender so made by it and that if

such tender was accepted the Defendant in Error should issue to it the license prescribed by law entitling it to do business from April 1, 1912, to April 1, 1913, in the State of South Carolina and to license its agents therein for the same period or that if the Defendant in Error declined so to do, then that the Plaintiff in Error should be remitted to its rights as given it by law in such cases made and provided. (Record, page 51).

Phoenix Mutual Life Insurance Company.
Hartford, Conn, March 20, 1912.

Hon. F. H. McMaster, Insurance Com'r, Columbia, S. C.

Dear Sir: Application is hereby made for license to this company to transact the business of life insurance in the State of South Carolina for the year beginning April 1, 1912.

We enclose herewith check to your order for $150 to pay the required license fee. Also enclosed please find Gulf and Atlantic Insurance Company's surety bond in the sum of $20,000, being similar to this company's bond accepted by you in the past.

Please issue formal certificate of authority, acknowledge receipt of enclosures and send us voucher for our remittance.

Yours very truly,
(Signed) H. E. JOHNSON,
Assist. Secretary.

Phoenix Mutual Life Insurance Company.
Hartford, Conn., March 21, 1912.

Hon. F. H. McMaster, Ins. Commissioner, Columbia, S. C.

Dear Sir: Enclosed please find requisition for licenses for twenty-one agents, for the year beginning April 1, 1912, together with check for $10.50 drawn to your order in payment of fees.

Please issue licenses and voucher for remittance in due course, and oblige,

Yours very truly,
(Signed) H. E. JOHNSON,
Assistant Secretary.

The Defendant in Error on the same day returned to the Plaintiff in Error the aforesaid bond and declined to issue to

it the license unless the Plaintiff in Error should make with the Defendant in Error a deposit of securities acceptable to him, in the sum of $20,000, and the Defendant in Error further required that such securities so demanded to be deposited and acceptable to him should be bonds of the State of South Carolina of any county, State or town of the State of South Carolina, or first mortgage bonds on real estate in the State of South Carolina, or first mortgage bonds of solvent domestic corporations, whose property is situated entirely within this State, or any property situate in this State and taxable therein, or time certificates of deposit in banks of the State. (Record, pages 50, 51, 52).

Insurance Department of South Carolina.
Columbia, S. C., March 25, 1912.

Phoenix Mutual Life Insurance Co., Hartford, Conn.

Dear Sirs: Acknowledgment is made of receipt of your application for license for your company and agents for the year beginning April 1, 1912; of your check for $150.00, annual admittance fees for the year beginning April 1, 1912; and of your check for $10.50, for agents' license fees for the year beginning April 1, 1912. And further acknowledgment is made that you tendered instead of the checks, and the checks are acknowledged as such tender, $160.50, in legal tender, gold coin.

I am returning herewith the bond of the Phoenix Mutual Life Insurance Company in the sum of twenty thousand dollars with the Gulf and Atlantic Insurance Company of Columbia, S. C., as surety.

I shall have to ask the Phoenix Mutual Life Insurance Company to deposit securities rather than a bond.

Very truly,
(Signed) F. H. McMASTER,
Ins. Commissioner.

Insurance Department of South Carolina.
Columbia, S. C., March, 16, 1912.

Gulf and Atlantic Insurance Co., Columbia, S. C.

Dear Sirs: I am returning herewith the bond of the Phoenix Mutual Life Insurance Company of Hartford. I am unable to accept a bond from this company unless they will furnish me with an affidavit showing that at

least one-fourth of its reserve on South Carolina policies has been invested in the securities named in the Act of 1910.

Very truly,
(Signed) F. H. McMASTER,
Ins. Commissioner.

The Plaintiff in Error refused to make such investments, taking the position that there is no statute in South Carolina which required any life insurance company to invest any part of its reserve on policies issued in the State, and that the only provision of law on the statute books of the State wherein is contained any reference to the class of securities which life insurance companies may invest in,is a provision in Section 14 of the Act of March 1, 1910, and subsequently amended by Section 20 of the Act approved March 8, 1910, which provided that if the executive officer of the company shall file with the Insurance Commissioner a sworn statement showing that at least one-fourth of the reserve on all policies issued in the State of South Carolina is maintained and invested in the securities above named, except time certificates of deposit in the banks of the State, there is a graduated scale of reduction of the percentage upon gross receipts to be paid as an additional license fee by the companies doing business in the State, but that there is no provision in any of the Acts making the investment of such reserve or any part thereof compulsory, nor is there any provision whatever on the statute books requiring that an insurance company, in order to be allowed the privilege of giving a surety bond under Section 13 of the Act, should make the investment in South Carolina securities required by the Defendant in Error herein. The Plaintiff in Error claims that the action of the Defendant in Error in undertaking to exact from it as a condition of accepting a surety bond from it the investment by it of at least one-fourth of its reserve in the securities required by the Defendant in Error and in accepting from other insurance companies who have complied with the arbitrary ultimatum of the Defendant in Error as above stated a surety bond of a surety company, and issuing to them a license to do business in the State of South Carolina thereupon, was discriminatory. It further was contended, by the Plaintiff in Error, that the Defendant in Error in licensing the Mutual Benefit Life Insurance Company upon the giving of a surety

company bond without that company having invested 25 per cent. of its reserve in the securities demanded by the Defendant in Error, also discriminated against the Plaintiff in Error, and that such action on the part of the Defendant in Error in accepting from one life insurance company a surety bond, and exacting from another life insurance company securities to be deposited, as in the case of this Plaintiff in Error, denied to this Plaintiff in Error the equal protection of the law, and deprived it of its property without due process of law, and was in violation of the 14th Amendment of the Constitution of the United States. The case was heard before the Supreme Court of South Carolina, and that court held that the requirement of the Defendant in Error that one applicant should deposit an approved bond and another applicant approved securities, was not a denial of the equal protection of the law, nor of due process of law, and did not violate the 14th Amendment of the Constitution of the United States. A petition for re-hearing was filed with the Supreme Court of South Carolina, and after due consideration the petition was dismissed and the stay set aside. These cases come before this court upon the assignments of error herewith referred to.

SPECIFICATIONS OF ERROR.

The names of the parties being changed, the assignments of error are the same in both cases, and it will be necessary for the purposes of this Argument to set out those in the first case only. (Record pp. 96, 97, 98).

I. That the said Supreme Court of South Carolina, in its final decree, erred, in that it held that the requirement made by the Defendant in Error herein, to-wit, that one applicant for a license to do business as a life insurance company in South Carolina, could deposit an approved bond, and another applicant for the same business must deposit approved securities, was not in violation of the Fourteenth Amendment of the Constitution of the United States, in that the discretionary power thus conferred upon the Defendant in Error, by the Decree of the said Supreme Court of South Carolina, denied to the Plaintiff in Error herein, the equal protection of the law, and deprived it of its property without due process of law.

II. That the said Supreme Court of South Carolina,

in its final Decree, also erred, in that the said Supreme Court of South Carolina held that this Plaintiff in Error was not entitled to have issued to it by the Defendant in Error herein, a license to do business as a life insurance company in the State of South Carolina, for the year beginning April 1, 1912, and ending March 31, 1913; and also in that said Court held that the refusal to issue such license to the Plaintiff in Error, was not in violation of the Fourteenth Amendment to the Constitution of the United States, in that the Plaintiff in Error was denied the equal protection of the law, and was deprived of its property without due process of law.

III. In that the said Supreme Court of South Carolina erred in holding that the Plaintiff in Error was not denied the equal protection of the law, and was not deprived of its property without due process of law, holding as follows, in the language of the said Court:

"The Act of 1910 (page 772) provides: 'Before granting a certificate of authority to do business in this State to any company, the Insurance Commissioner shall be satisfied by proper evidence, that such applicant for license is duly qualified to do business under the law of this State; that it is safe and solvent; that its dealings are fair and equitable; and that it conducts its business in a manner not contrary to the public interests.' "

It will thus be seen that the statute contemplates that the Insurance Commissioner must be satisfied by proper evidence, in each and every case, that the applicant possesses the necessary qualifications for doing business in this State, and that in each case, he must determine whether the public interest would be best subserved, by requiring the particular applicant, to deposit an approved bond, or approved securities. By this construction alone, can the discretionary powers conferred upon the Commissioner, be exercised, and made effective. Therefore, the requirement that one applicant should deposit an approved bond, and another applicant approved securities, is not a denial of the equal protection of the law.

ARGUMENT.

Though four in number, the assignments of error raise but one question, namely: Was the action of the Defendant in

Error, the Insurance Commissioner of South Carolina, in refusing to issue a license to the Plaintiff in Error unless the Plaintiff in Error should have invested at least one-fourth of its reserve on South Carolina policies in the securities specified in the circular of July 8, 1911, hereinbefore set out, and in refusing to accept as a deposit the surety bond tendered by the Plaintiff in Error, a denial to the Plaintiff in Error of the equal protection of the laws, and a deprivation of its property without due process of law, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States?

Of this question there are two phases, which we shall discuss in their order, namely:

First: Was the action of the Defendant in Error, in arbitrarily demanding that all foreign life insurance companies which had not invested at least one-fourth of their reserve on South Carolina policies in the securities specified should deposit with him securities in the sum of $20,000 as a condition precedent to obtaining a license to do business within the State of South Carolina, and in refusing to accept the surety bond tendered by the Plaintiff in Error, a denial to this Plaintiff in Error of the equal protection of the laws, and a deprivation of its property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States?

Secondly: Was the action of the Defendant in Error, in accepting a surety bond from the Mutual Benefit Life Insurance Company, of Newark, N. J., as a sufficient deposit for the issuance of a license to that company to do business within the State of South Carolina, although that company had not made the investments required by his circular letter of July 8, 1911, and in refusing to accept from the Plaintiff in Error a similar bond, so arbitrary and unreasonable a discrimination between individuals in the same class as to violate the provisions of the Fourteenth Amendment to the Constitution of the United States, and to deny to the Plaintiff in Error the equal protection of the laws secured to it by that Amendment?

I.

The authority from which the Defendant in Error derived his alleged right to impose as conditions precedent to the is-

suing of a license to foreign life insurance companies, the terms set forth in his circular letter of July 8, 1911, is avowedly Section 13 of the Act of March 8, 1910, 26 S. C. Statutes at Large, 774, hereinbefore set out. To that Act then must his action be referable, and under its terms must his conduct be justified or condemned.

An analysis of the Act in question shows clearly that the Legislature, in provjding for deposits by insurance companies, before obtaining their licenses, has divided them all, domestic and foreign, into several distinct classes. Legal reserve life insurance companies are required to deposit twenty thousand dollars; fire, accident, casualty and surety insurance companies are classed together and required to deposit ten thousand dollars; domestic industrial insurance companies are placed in another class; domestic mutual life insurance companies, in another; domestic mutual assessment companies not doing business in more than two adjoining counties are excepted from the provisions of the Act; other companies not specified are classed with fire, accident, casualty and surety insurance companies, and are required to deposit ten thousand dollars.

As to the nature of the deposit, the Statute provides as follows:

> "Before licensing any insurance company to do business in this State, the Insurance Commissioner shall require each such company to deposit with him an approved bond, or approved securities, *in the discretion of the Commissioner.*"

The language is interesting. The Defendant in Error contends that the words italicised have the effect to give him the power arbitrarily to discriminate between companies which have been carefully placed in the same class by the same Act, and regardless of the classification adopted by the Act from which he derives his alleged power, to say to one legal reserve life insurance company, "I will accept from you a surety bond," and to another, "From you I will not accept a surety bond, but will require a deposit of securities, because you have not complied with another requirement which I have seen fit to make."

If the classification adopted by the Legislature in this Statute means anything at all, it means that the constituents of each

class are to be treated with equality. The discretionary power conferred upon the Defendant in Error to require "an approved bond or approved securities" cannot be considered except in the light of this classification, and when so considered can have but one meaning, namely: that the Defendant in Error should have the power to exercise his discretion in this regard, provided that the exercise of that discretion should operate alike upon all insurance companies in the same class. In other words, had the Insurance Commissioner declared in his circular letter of July 8, 1911, that thenceforth from legal reserve life insurance companies no surety bonds would be accepted, but that all legal reserve life insurance companies would be required to deposit securities before obtaining a license, this appeal could not have arisen.

But where, as in the case at bar, the Insurance Commissioner has gone beyond the scope of the Act from which he derived his power, and has arbitrarily discriminated between the insurance companies in the same class, we submit that his action is not sanctioned by the laws of the State, but constitutes a deprivation of the property of this Plaintiff in Error without due process of law, and a denial to it of the equal protection of the law within the meaning of the Fourteenth Amendment.

The statute requires each such company to deposit with the Insurance Commissioner "an approved bond or approved securities in the discretion of the Commissioner; each legal reserve life insurance company, $20,000.00, and each other company $10.000,00." The words "approved bond or approved securities" have a clear, well-defined definition.

The Century Dictionary defines "approved"—"To show to be real or true," and illustrates "approved bill or note in commerce; a bill or note drawn by a solvent trustworthy party, and to which, therefore, no reasonable objection can be made."

Anderson's Law Dictionary defines a "bond" as "an instrument in writing that legally binds a party to do a certain thing;" and also, as "a deed whereby the obligor obliges himself, his heirs, executors and administrators, to pay a certain sum of money to another, at a day appointed."

The same author defines "securities"—as "a written assurance for the return of the payment of money; evidence of indebtedness."

Classification, in its very definition, implies equality of the

individuals of each class. Discrimination between individuals of the same class is a denial of the equal protection of the laws, and a deprivation of property without due process of law. That the same means and methods shall be applied impartially to all the constituents of each class, and that no greater burdens shall be laid upon one than are laid upon another in the same calling, are the keys for the interpretation of the Fourteenth Amendment used by this court in numerous cases.

Leeper v. Texas, 139 U. S., 462;
Kentucky R. R. Tax Cases, 115 U. S., 337;
Barbier v. Connolly, 113 U. S., 27;
Bell's Gap R. R. v. Penna., 134 U. S., 228;
Connolly v. Union Sewer Pipe Co., 184 U. S., 540;
Moore v. Missouri, 159 U. S., 678;
Florida, etc. Ry. v. Reynolds, 183 U. S., 471;
Mobile & O. Ry. v. Tennessee, 153 U. S., 486;
Adams Express Co. v. Ohio, 165 U. S., 194;
Mich. Cent. R. R. v. Powers, 201 U. S., 245;
S. W. Oil Co. v. Texas, 217 U. S., 114;
Citizens' Tel. Co. v. Fuller, 229 U. S., 332;
Magown v. Bank, 170 U. S., 283;
Giozza v. Tiernan, 148 U. S., 657;
Cotting v. Kansas City, 183 U. S., 79;
Insurance Co. v. Mettler, 185 U. S., 308;
Field v. Asphalt Co., 194 U. S., 618.

"The general purpose and scope of the Fourteenth Amendment, and the general qualifications necessary to be applied to it, are well stated in *Barbier vs. Connolly*, 113 U. S., 27, 31. Mr. Justice Field, in delivering the opinion of the court there said:

> 'The Fourteenth Amendment (in declaring that no State shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction, the equal protection of the laws) undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoilation of property, but that equal protection and security should be given to all under like circumstances, in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and

enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of any one, except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition.' "

Bell's Gap Railroad Co. vs. Pennsylvania, 134 U. S., 238.

And in the recent case of *Selover, Bates & Co.*, 226 U. S., 112, the principle of the foregoing cases is followed, the court declaring the test of equal protection under the Fourteenth Amendment to be whether all parties are treated alike in the same situation.

Here it is self-evident that the Legislature intended that similar treatment should be accorded to all companies in the same class, from the very fact of its having classified them in the manner referred to; and when the Insurance Commissioner undertook to impose arbitrary conditions upon the granting of a license to foreign insurance companies, he discriminated between individuals which had been unmistakably placed in the same class, and violated the provisions of the Fourteenth Amendment to the Constitution of the United States.

But leaving aside for the moment the unquestioned and unquestionable fact that a classification of the various insurance companies was clearly made by the provisions of the Act from which the Defendant in Error claims to have derived his arbitrary power, let us consider the act of the Defendant in Error solely in the light of the first three lines of the Act of 1910; in other words, as if the matter of classification had been left to the Defendant in Error himself.

A corollary of the provisions of the Fourteenth Amendment as clear as the rule itself, is that the distinctions upon which the classification is based must be reasonable and not arbitrary.

In *Citizens' Telephone Co. v. Fuller*, 229 U. S., 322, the Court, after discussing with approval the principles laid down in *Bell's Gap R. R. v. Pennsylvania*, 134 U. S., 232; *American Sugar Refining Co. v. Louisiana*, 179 U. S., 89; *Pacific Express*

Co. v. Seibert, 142 U. S., 334; *Penn. & Home Ins. Co. v. New York*, 134 U. S., 594, and other cases, said:

> "Granting the power of classification, we must grant Government the right to select the differences upon which the classification shall be based, and they need not be great or conspicuous. *Keeney v. N. Y.*, 222 U. S., 525. The State is not bound by any rigid equality. This is the rule—its limitation is that it must not be exercised in 'clear and hostile discrimination between particular persons and classes.'" Citing *Quong Wing v. Kirkendall*, 223 U. S., 59.

As was said by the Court in the case of *A. T. & S. F. Ry. Co. v. Matthews*, 174 U. S., 96, "the very idea of classification is that of inequality."

We readily admit that it would have been competent for the Defendant in Error, had the Statute, under which he acted so authorized, to have determined upon what differences a distinction should be made for the purpose of classification between individuals otherwise having resemblances. But such a classification, we earnestly submit, must be based upon reason and sound justice, and the power if so given cannot be arbitrarily exercised.

> *International Harvester Co. of America v. Missouri*, 234 U. S., 199.

Here there is confessedly no distinction upon which the regulation prescribed by the Insurance Commissioner rests, other than the investment or non-investment of a certain portion of the reserve in certain South Carolina securities. From those companies which have so invested, having complied with the requirements of the Statutes relating to license fees, etc., the Insurance Commissioner, under the circular above referred to, offers to accept as deposit before issuing license, a surety bond; from those which have not so invested, he declares he will require the deposit of securities and will accept no surety bond.

In *Raymond v. Chicago Union Traction Co.*, 207 U. S., 20, the Court held that the assessment by a State Board of Equalization of the franchises and other property of one corporation at a different rate and by a different method from that em-

ployed for other corporations of the same class for the same year, was a denial of the due process of law and the equal protection of the laws secured by the Fourteenth Amendment.

In the case at bar, the question arises not out of a matter of taxation merely, but involves the very existence of the Plaintiff in Error in the State of South Carolina.

It is undisputed that such a requirement by the Insurance Commissioner of South Carolina as was made in his circular of July 8, 1911, could not possibly be met by the Plaintiff in Error. (Record, page 39). To so vital an extent would the reasonableness or unreasonableness of the Defendant in Error's action, supposing that the power of classification were left with him by the Statute under which he acted, affect the Plaintiff in Error.

But when we consider the fact that by the very words of the Statute this power was not left open, but on the contrary, the classification was clearly and unmistakably made by the Legislature itself, we are driven as a necessary result to the conclusion that under the provisions of the Fourteenth Amendment to the Constitution of the United States, as construed by this Court in the numerous cases referred to, the action of the Defendant in Error in arbitrarily discriminating between individuals in the same class, constituted a deprivation of the property of this Plaintiff in Error without due process of law, and a denial to it of the equal protection of the laws within the inhibition of that amendment.

II.

Coming now to the second phase of the question raised by the assignments of error, let us apply the principles hereinbefore stated to the situation presented by the action of the Defendant in Error in the case of the Mutual Benefit Life Insurance Co., of Newark, N. J. From that company, admittedly in the same class as the Plaintiff in Error, whether we accept the classification adopted by the General Assembly of South Carolina, in Section 13 of the Act of 1910, hereinbefore referred to, or the arbitrary arrangement of the Insurance Commissioner himself set forth in his circular letter of July 8, 1911; he accepted a surety bond as deposit, although that company had not made the investments required by the circular above referred to, and although under identical circumstances he

refused to accept from the Plaintiff in Error a similar bond. (See Record, pages 58, 59, 60.)

The testimony of the Defendant in Error reveals the fact that at the time of accepting from the Mutual Benefit Life Insurance Co., of Newark, N. J., the surety bond in the sum of $20,000 as deposit and issuing to it a license to do business within the State of South Carolina, he was aware of the fact that that company had not invested one-fourth of its reserve on South Carolina policies in the securities specified in his circular letter. (Record, page 58.)

The situation of that company was identical with that of the Plaintiff in Error. Both were foreign mutual life insurance, seeking a license to do business within the State of South Carolina; each had tendered to the Defendant in Error a bond in the sum of $20,000 with Atlantic and Gulf Insurance Co. as surety; neither had complied with the requirements of the circular letter of July 8, 1911, with regard to the investment of their reserves in South Carolina securities. Yet, from the one, the Defendant in Error accepts the bond tendered, while to the other he says. "I am unable to accept a bond from this company unless they will furnish me with an affidavit showing that at least one-fourth of its reserve on South Carolina policies has been invested in the securities named in the Act of 1910." (Record, page 48.)

This action, we submit, was discrimination of the most arbitrary nature, and a clear invasion of the right of the Plaintiff to the equal protection of the laws as secured by the Fourteenth Amendment. The Defendant in Error has not only undertaken to disregard the plain language of the Statute, in regard to classification of the various kinds of insurance companies, and to impose most arbitrary and unequal terms upon individuals of the same class, as we have attempted to show in the first division of this argument, but he has taken upon himself to go further, and to say that the very terms which he himself has imposed may or may not be insisted upon, as he may see fit.

A repetition of the principles laid down in the cases hereinbefore cited is unnecessary. We deem it sufficient merely to call the attention of the Court to the case of *Raymond v. Chicago Union Traction Co.*, 207 U. S., 20. There the question arose in regard to the action of a State Board of Equalization in employing a different method in the assessment of the property

of one corporation from that used in the case of others of the same class for the same year.

Here the principle involved is the same; the result is not the imposition of an unjust burden upon the existence of the Plaintiff in Error in the State of South Carolina, but the very destruction of that existence.

T. MOULTRIE MORDECAI,
For Plaintiffs in Error.

Supreme Court of the United States

OCTOBER TERM, 1914

No. 195

THE STATE OF SOUTH CAROLINA, EX RELATIONE, PHŒNIX MUTUAL LIFE INSURANCE COMPANY, PLAINTIFF IN ERROR,

vs.

FITZ H. McMASTER, AS INSURANCE COMMISSIONER OF THE STATE OF SOUTH CAROLINA.

No. 196

THE STATE OF SOUTH CAROLINA, EX RELATIONE, LOUIS SHERFESEE AND FRANK F. COVINGTON, PLAINTIFFS IN ERROR,

vs.

FITZ H. McMASTER, AS INSURANCE COMMISSIONER OF THE STATE OF SOUTH CAROLINA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

Argument of Thomas H. Peeples, Attorney General of South Carolina.

ARGUMENT.

The questions involved in the assignment of error by the plaintiff in error are as to whether the plaintiff in error has been deprived of its property without due process of law, and has been denied the equal protection of the laws by reason of the refusal of the Insurance Commissioner of South Carolina to grant a license to the Phœnix Mutual Life Insurance Company unless the said company complied with the laws of South Carolina relating to the issuance of licenses to foreign insurance companies.

The questions come before the Supreme Court of South Carolina under an Act entitled "An Act to provide a method of appeal from the orders, rulings or decisions of the Insurance Commissioner," approved February, 1912, providing "That any order, ruling or decision of the Insurance Commissioner in all matters, either of law or discretion, within the jurisdiction of his department shall be subject to review by *certiorari* or mandamus proceedings before any Circuit Judge or Justice of the Supreme Court, which may be held at chambers or in open Court, upon reasonable notice to the Insurance Commissioner." After references had and hearings before the Supreme Court, the appeal of the insurance company was dismissed, the opinion being set out on page seventy-seven of the Record.

It is no longer a question open for argument that the insurance business cannot be carried on in a State by a foreign corporation without complying with all the conditions imposed by the legislation of that State.

Bank of Augusta v. *Earle*, 38 U. S., 519.
Paul v. *Virginia*, 75 U. S., 168.
Liverpool Ins. Co. v. *Massachusetts*, 77 U. S., 566.
Cooper Mfg. Co. v. *Ferguson*, 113 U. S., 727.
Philadelphia Fire Ass'n v. *New York*, 119 U. S., 110.
LaFayette Ins. Co. v. *French*, 59 U. S., 404.
Society for Savings v. *Coite*, 73 U. S., 594.
Providence Institute v. *Massachusetts*, 73 U. S., 611.
Hamilton Mfg. Co. v. *Massachusetts*, 73 U. S., 632.
DuCat v. *Chicago*, 77 U. S., 410.

In the case of *Paul* v. *Virginia*, 75 U. S., 168, the doctrine was stated as follows: "A corporation being a mere creation of local law can have no legal existence beyond the limits of the

sovereignty where created. As stated by this Court in *Bank of Augusta* v. *Earle*, 'It must dwell in the place of its creation and cannot migrate to another sovereignty.' The recognition of its existence even by other States and the enforcement of its contracts made therein depend purely upon the comity of those States—a comity which is never extended where the existence of the corporation or the exercise of its powers are prejudicial to their interests or repugnant to their policies. Having no absolute right of recognition in other States, but depending for such recognition and the enforcement of its contracts upon their assent, *it follows as a matter of course that such assent may be granted upon such terms and conditions as those States may think proper to impose. They may exclude the foreign corporation entirely. They may restrict its business to particular localities, or they may exact such security for the performance of its contracts with their citizens as in their judgment will best promote the public interest. The whole matter rests in their discretion.*"

Pursuant to the powers vested in the respective States, the State of South Carolina has prescribed certain conditions for the admission of foreign insurance corporations into the State of South Carolina and certain conditions to be complied with by such companies before receiving an annual license to do business within the State of South Carolina. Some of these conditions are prescribed by statute; others are placed within the discretion of the duly appointed agents and officers of the State.

Section 10 of Act No. 420, Statutes at Large, 1910, provides: "Before granting a certificate of authority to do business in this State to any company, the Insurance Commissioner shall be satisfied by proper evidence that such applicant for license is duly qualified to do business under the laws of this State; that it is safe and solvent; that its dealings are fair and equitable, *and that it conducts its business in a manner not contrary to the public interests.*"

Section 13 of the same Act provides: "Before licensing any insurance company to do business in this State the Insurance Commissioner shall require each such company to deposit with him an approved bond or approved securities, *in the discretion of the Commissioner*, as follows: Each Legal Reserve Life Insurance Company, twenty thousand dollars; each Fire, Accident, or Casualty or Surety Insurance Company, or any company not herein specified, ten thousand dollars, etc."

These are conditions which have been laid down by the General Assembly of South Carolina, and they must be complied with by the foreign life insurance companies or they cannot do business within the State of South Carolina. It makes no difference whether in an individual case, such as the case at bar, these conditions may seem harsh, or conditions such as cannot be complied with by this company,—if such be the case, it cannot complain. The foreign companies must comply with the conditions imposed by the laws of South Carolina.

The plaintiff in error claims that its property has been taken without due process of law, and that it has been denied the equal protection of the laws by reason of the fact that the Insurance Commissioner has imposed conditions which are not imposed by statute and were not in contemplation at the time of the passage of the statute.

The laws of South Carolina require that either, securities shall be deposited or a bond shall be deposited, and as to which one of these two deposits shall be made, that is a matter placed by statute entirely *in the discretion of the Insurance Commissioner and not in the discretion or choice of the Phoenix Mutual Life Insurance Company.* This matter being within the discretion of the Insurance Commissioner, it is respectfully submitted, that the Insurance Commissioner has the right and power to determine which of these deposits shall be filed, and is not called upon to give any reasons for his actions in the matter, or upon what he based his decision and findings. However, in the case at bar, the Insurance Commissioner has not gone this far; but in order to show his desire to be fair and just to all companies, the plaintiff in error being one among them, and in order to best subserve the interests of the State, and in order to give to foreign life insurance companies plenty of time to adjust themselves to certain requirements which he intended to put in force, the Insurance Commissioner, on the 8th day of July, 1911—seven months before the license for the succeeding year was to be obtained—addressed the following letter, which is set out on page twenty-four of the Record, to all the foreign life insurance companies desiring to do business in the State of South Carolina:

"Insurance Department of South Carolina,
Fitz Hugh McMaster, Commissioner.
Columbia, S. C., July 8, 1911.

Phœnix Mutual Life Insurance Co., Hartford, Connecticut.

Dear Sirs: Under the law requiring insurance companies to make deposits with the Insurance Commissioner, it is within the discretion of the Commissioner to accept a surety bond, or to require the deposit of securities.

This is to notify you that, on the next license year, April 1, 1912, the Insurance Commissioner will ask all companies, which have not invested at least one-fourth of their reserve on South Carolina policies in the securities named in the Act of 1910, to deposit South Carolina securities with the Department. From such companies, no surety bond will be accepted.

From companies which have invested at least one-fourth of their reserve on South Carolina policies in securities of this State, a surety bond may be accepted.

This Department will receive on deposit South Carolina State, county or municipal bonds; first mortgage bonds of real estate in the State; first mortgage bonds of solvent domestic corporations, whose property is situate entirely within the State; or time certificates of deposits in banks of this State.

This notice is given now, so that you may provide yourself with such securities as may be satisfactory to you.

Very truly,
(Signed) F. H. MCMASTER,
McM-E. Insurance Commissioner."

In giving such notice to the Phœnix Life Insurance Company there was no discrimination whatever exercised by the Insurance Commissioner against the plaintiff in error, for this same notice was given to all foreign life insurance companies. It is unnecessary, we think, to give any reasons for the position taken by the Insurance Commissioner, for, we think, that it was within the discretion of the Insurance Commissioner to impose such terms as he might deem to be for the best interest of the State of South Carolina, as is allowed to him by the discretion vested in him under the terms of the Act. The conditions imposed by the Insurance Commissioner are reasonable and so recognized by the Act of 1910, *supra*, Section 20 of that Act providing that the license fees of foreign insurance companies shall be graduated in accordance with the amount of the reserves of the several insurance companies invested in the State of South Carolina, or in its securities. Such a condition

for doing business in South Carolina was undoubtedly in contemplation when the Act referred to was passed, otherwise the words in the Act *"in the discretion of the Commissioner,"* would be absolutely useless and without any meaning or effect. If it is for the insurance companies to arbitrarily determine and decide what manner of security they shall deposit bond or securities, in order to obtain a license, why is any discretion whatever vested in the Insurance Commissioner?

The State acts through its agents; discretion is vested in the Insurance Commissioner, the head of one of its departments of government, and in the exercise of those powers and in the exercise of that discretion, the State has absolute power to impose any restrictions it may see fit and may exclude foreign life insurance companies altogether. If they do not care to comply with the conditions imposed by statute, they must stay out. If they are doing business in the State and cannot and will not comply with the conditions imposed by statute, they must get out when the time for which they have been licensed has expired.

A foreign insurance company is not within the jurisdiction of the State of South Carolina until it has complied with the laws of this State as to the payment of license fees, taxes and the deposit of securities or the giving of a bond. A company having complied with the law and received a license for a year is within the State for that year, but it is within the power of the State to change the conditions of admission at any time as to the future, and if it makes such a change for the future, the foreign corporation is not within the State after the expiration of the year for which it was licensed, until it has complied with such changed conditions.

Fire Ass'n of Philadelphia v. *N. Y.*, 119 U. S., 110.

It is respectfully submitted that the discretion of the Insurance Commissioner is not reviewable by this Court. If, however, it is held that such discretion is reviewable, has the Insurance Commissioner abused his discretion? The Insurance Commissioner must, under the statute, require one of two deposits to be made and he is not called upon by statute to give any reason for his election—whether he shall require a bond or whether he shall require a deposit of securities—for in the very nature of the case, where so many human elements enter in determining as to which is to the better interest of the people—the deposit of a bond or deposit of securities—frequently it is most difficult to put into language what may almost be intui-

tions for requiring the deposits of securities rather than a bond or *vice versa.*

The letter of the Insurance Commissioner, dated July 8, 1911, heretofore referred to, sought to indicate a general rule by which the purpose of companies and their intention of becoming permanent institutions for the conduct of business in South Carolina should be measured—the investment in South Carolina securities. It simply stated a somewhat general rule by which the intents and purposes of a company could be determined, such intents and purposes enabling the Insurance Commissioner the better to determine whether to require at the beginning of the next license year a deposit of a surety company bond or a deposit of security. This is in accord with the well known policies of the State of South Carolina ever since the establishment of the Insurance Department of this State.

The Phœnix Mutual Life Insurance Company attempts to maintain its charge of discrimination by showing to the Court that the Insurance Commissioner accepted a surety company bond from the Mutual Benefit Life Insurance Company and refused to accept a surety company bond from the petitioner, the Phœnix Mutual Life Insurance Company, alleging that the two companies were of the same class. They are of the same class in that they are life insurance companies, but they are not in the same class so far as the intents and purposes for permanently doing business in South Carolina is concerned. While the Mutual Benefit Life Insurance Company did not have actually invested one-fourth of its reserve in South Carolina securities on April 1, 1912, it did have invested and approved awaiting investment, in a class of securities, real estate mortgage loans, considerably in excess of one-fourth of its reserve on South Carolina policies, most surely indicating an intention to remain permanently within the State. The making of this class of securities necessitates detail of organization and clearly indicates permanency of occupancy. No mention is made of loans to policyholders on account of their policies in the Mutual Benefit Life Insurance Company, such loans not being considered in the nature of investments in South Carolina securities so far as indicating an intention of permanent occupancy in the State is considered. Out of a total of $375,000.00 of reserve on South Carolina policies, the Phœnix Mutual Life Insurance Company had only $10,350.00 of investments in any form of South Carolina securities, these

being sewer bonds of the city of Rock Hill, South Carolina (see Exhibit G, page 72 of the Record); and, as shown by the letters of Mr. John M. Holcombe, president of the Phœnix Mutual Life Insurance Company, to be found on pages 69 to 71 of the printed Record, it had no purpose or intention of even considering the investment in South Carolina a securities except in a most general way.

By an examination of the list of deposits made with the Insurance Commissioner for the year 1911, as shown in the printed Record, Exhibit I, pages 73 and 74, it will be noted that eighteen life insurance companies of the same class as the plaintiff in error had made deposits of securities with the Insurance Commissioner of South Carolina, and that fifteen companies of the same class had made deposits of surety company bonds. The record does not disclose the reasons why eighteen companies had made deposits of securities and fifteen companies had been licensed upon the deposit of surety company bonds. This portion of the Record is simply cited to show that the Phœnix Mutual Life Insurance Company has not been singled out by the Insurance Commissioner and discriminated against in the manner alleged in their petition; but, on the other hand, that the same rules and requirements have been made of all life insurance companies desiring a license to do business within the State of South Carolina.

The Phœnix Mutual Life Insurance Company has not been deprived of any of its property without due process of law and the acts of the Insurance Commissioner in this matter have not deprived it of any of its property. The issuing of licenses to foreign insurance companies is placed in the hands of the Insurance Commissioner.

The Act of 1912 referred to, gives any party full power of appeal to the Supreme Court of South Carolina if he feels aggrieved by the decision of the Insurance Commissioner. "Whenever by the laws of a State or by State authority a tax, assessment or other burden is imposed upon property for the public use, whether it be of a whole State or of some more limited portion of the community and those laws provide for a mode of confirming or contesting the charge thus imposed, in the ordinary Courts of justice, with such notice to the person of such proceedings in regard to the property as is appropriate to the nature of the case, the judgment in such proceedings can not be said to deprive the owner of his property without due

process of law, however obnoxious it may be to other objections."

Davidson v. *New Orleans,* 96 U. S., 97.
Hagar v. *Reclamation District,* 111 U. S., 701.
Kentucky Railroad Rate Tax Cases, 115 U. S., 337.

In the case at bar the plaintiff in error has had full and free access to the Courts of the State of South Carolina and has had full advantage of the process of such Courts provided by law in such cases.

The plaintiff in error has not been denied the equal protection of the laws. It is true, as quoted in the argument of counsel for the plaintiff in error, that this Court has said in the case of *Bell's Gap Railroad Company* v. *Commonwealth of Pennsylvania,* 134 U. S., 232, that "The general purpose and scope of the Fourteenth Amendment and the general qualifications necessary to be applied to it are well stated in *Barbier* v. *Connolly,* 113 U. S., 27. Mr. Justice Field, in delivering the opinion of the Court there, said: 'The Fourteenth Amendment, in declaring that no State shall deprive any person of life, liberty or property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws, undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the Courts of the country for the protection of their persons and property, the prevention and redress of wrongs and the enforcement of contracts; that no impediment should be imposed to the pursuits of any one except as apply to the same pursuits of others under like circumstances; that no greater burden should be laid upon one than is laid upon others in the same calling and condition; and that in the determination of criminal justice, no different or higher punishment should be imposed upon one than such as is prescribed to all for like offenses.'" The Court, however, went on to say: *"But neither the amendment—broad and comprehensive as it is—nor any other amendment, was designed to interfere with the power of the State, sometime called the police power, to prescribe regulations to promote the health,*

peace, morals, education and good order of the people and to legislate so as to increase the industries of the State, develop its resources and add to its wealth and prosperity."

Applying these tests, the statutes of South Carolina under consideration are not in conflict with the Fourteenth Amendment to the Federal Constitution.

Applying the facts in the case at bar, the action of the Insurance Commissioner cannot be construed into the taking of the property of the plaintiff in error without due process of law, or denying to it the equal protection of the law.

All life insurance companies were placed in the same class by the Insurance Commissioner. Those who had certain investments, to wit: Investments in South Carolina securities, were permitted, in the discretion of the Commissioner, to deposit a surety bond if they saw fit. Those who did not have certain investments in South Carolina securities were, within the discretion of the Insurance Commissioner, required to deposit securities instead of bonds in surety companies.

To sum up the entire matter under consideration, it is only necessary to quote from the opinion rendered by Mr. Chief Justice Gary, in delivering the opinion of the Supreme Court of South Carolina in this case, in which he said: "The petitioner did not offer to deposit with the Insurance Commissioner any securities whatever, nor to comply with the said ruling in any manner; but, in effect attempted to exercise its own discretion by insisting that the Insurance Commissioner accept the bond which was tendered. Under these circumstances the petitioner is not in a position to raise this question, as it has failed to show that said ruling was prejudicial to its rights. * * * The Insurance Commissioner must be satisfied by proper evidence in each and every case that the applicant possesses the necessary qualifications for doing business in this State, and that in each case he must determine whether the public interest would be best subserved by requiring the particular applicant to deposit an approved bond or approved securities. By this construction alone can the discretionary powers conferred upon the Insurance Commissioner be exercised and made effective. Therefore, the requirement that one applicant should deposit an approved bond and another applicant approved securities is not a denial of the equal protection of

the law. From these conclusions it necessarily follows that the petitioner was not deprived of his property without due process of law."

Respectfully submitted,

THOMAS H. PEEPLES,
Attorney General